75TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
3d Session } { No. 2330

REVENUE BILL OF 1938

MAY 11, 1938.—Ordered to be printed

Mr. DOUGHTON, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H. R. 9682]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9682) to provide revenue, equalize taxation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 4, 12, 14, 16, 17, 25, 28, 29, 30, 31, 32, 35, 43, 45, 46, 50, 51, 53, 55, 65, 66, 70, 74, 75, 76, 77, 78, 80, 81, 82, 91, 95, 96, 97, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 147, 156, 160, 161, 162, 163, 164, 165, 166, 170, 171, 173, 179, 180, 181, 183, 184, 185, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 200, 212, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, and 229, and agree to the same.

That the Senate recede from its amendments numbered 1, 5, 7, 8, 9, 11, 13, 18, 19, 23, 24, 26, 33, 34, 36, 37, 38, 39, 40, 41, 48, 49, 56, 57, 59, 61, 63, 67, 68, 71, 83, 84, 85, 86, 87, 89, 90, 92, 93, 94, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 113, 114, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 145, 146, 148, 149, 151, 153, 154, 155, 158, 159, 172, 174, 175, 176, 177, 178, 182, 187, 203, 204, 205, 209, 210, 213, 230, 237, and 239.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 13. TAX ON CORPORATIONS IN GENERAL.

(a) ADJUSTED NET INCOME.—For the purposes of this title the term "adjusted net income" means the net income minus the credit provided

in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

(b) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the net income of every corporation the net income of which is more than $25,000 (except a corporation subject to the tax imposed by section 14, section 231 (a), Supplement G, or Supplement Q) a tax computed under subsection (c) of this section or a tax computed under subsection (d) of this section, whichever tax is the lesser.

(c) GENERAL RULE.—The tax computed under this subsection shall be as follows:

(1) A tentative tax shall first be computed equal to 19 per centum of the adjusted net income.

(2) The tax shall be the tentative tax reduced by the sum of—

(A) 16½ per centum of the credit for dividends received provided in section 26 (b); and

(B) 2½ per centum of the dividends paid credit provided in section 27, but not to exceed 2½ per centum of the adjusted net income.

(d) ALTERNATIVE TAX (CORPORATIONS WITH NET INCOME SLIGHTLY MORE THAN $25,000).—

(1) If no portion of the gross income consists of interest allowed as a credit by section 26 (a) (relating to interest on certain obligations of the United States and Government corporations), or of dividends of the class with respect to which credit is allowed by section 26 (b), then the tax computed under this subsection shall be equal to $3,525, plus 32 per centum of the amount of the net income in excess of $25,000.

(2) If any portion of the gross income consists of such interest or dividends, then the tax computed under this subsection shall be as follows:

(A) The net income shall be divided into two divisions, the first division consisting of $25,000, and the second division consisting of the remainder of the net income.

(B) To the first division shall be allocated, until an aggregate of $25,000 has been so allocated: First, the portion of the gross income consisting of such interest; second, the portion of the gross income consisting of such dividends; and third, an amount equal to the excess, if any, of $25,000 over the amounts already allocated to the first division.

(C) To the second division shall be allocated, until there has been so allocated an aggregate equal to the excess of the net income over $25,000: First, the portion of the gross income consisting of such interest which is not already allocated to the first division; second, the portion of the gross income consisting of such dividends which is not already allocated to the first division; and third, an amount equal to the excess, if any, of the net income over the sum of $25,000 plus the amounts already allocated to the second division.

(D) The tax shall be equal to the sum of the following:

(i) A tax on the $25,000 allocated to the first division, computed under section 14 (c), on the basis of the allocation made to the first division and as if the amount so allocated constituted the entire net income of the corporation.

(ii) 12 per centum of the dividends received allocated as such to the second division.

(iii) 32 per centum of the remainder of the amount allocated to the second division, except interest allowed as a credit under section 26 (a).

(e) CORPORATIONS IN BANKRUPTCY AND RECEIVERSHIP.—If a domestic corporation is for any portion of the taxable year in bankruptcy under the laws of the United States, or insolvent and in receivership in any court of the United States or of any State, Territory, or the District of Columbia, then, when the tax is computed under subsection (c), the tentative tax shall be reduced by 2½ per centum of the adjusted net income, instead of by 2½ per centum of the dividends paid credit.

(f) JOINT-STOCK LAND BANKS.—In case of a joint-stock land bank organized under the Federal Farm Loan Act, as amended, when the tax is computed under subsection (c), the tentative tax shall be reduced by 2½ per centum of the adjusted net income, instead of by 2½ per centum of the dividends paid credit.

(g) RENTAL HOUSING CORPORATIONS.—In the case of a corporation which at the close of the taxable year is regulated or restricted by the Federal Housing Administrator under section 207 (b) (2) of the National Housing Act, as amended, when the tax is computed under subsection (c), the tentative tax shall be reduced by 2½ per centum of the adjusted net income, instead of by 2½ per centum of the dividends paid credit; but only if such Administrator certifies to the Commissioner the fact that such regulation or restriction existed at the close of the taxable year. It shall be the duty of such Administrator promptly to make such certification to the Commissioner after the close of the taxable year of each corporation which is so regulated or restricted by him.

(h) EXEMPT CORPORATIONS.—For corporations exempt from taxation under this title, see section 101.

(i) TAX ON PERSONAL HOLDING COMPANIES.—For surtax on personal holding companies, see Title IA.

(j) IMPROPER ACCUMULATION OF SURPLUS.—For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

SEC. 14. TAX ON SPECIAL CLASSES OF CORPORATIONS.

(a) SPECIAL CLASS NET INCOME.—For the purposes of this title the term "special class net income" means the adjusted net income minus the credit for dividends received provided in section 26 (b).

(b) There shall be levied, collected, and paid for each taxable year upon the special class net income of the following corporations (in lieu of the tax imposed by section 13) the tax hereinafter in this section specified

(c) CORPORATIONS WITH NET INCOMES OF NOT MORE THAN $25,000.—If the net income of the corporation is not more than $25,000, and if the corporation does not come within one of the classes specified in subsection (d), (e), (f), or (g) of this section, the tax shall be as follows:

Upon special class net incomes not in excess of $5,000, 12½ per centum.

$625 upon special class net incomes of $5,000, and upon special class net incomes in excess of $5,000 and not in excess of $20,000, 14 per centum in addition of such excess.

$2,725 upon special class net incomes of $20,000, and upon special class net incomes in excess of $20,000, 16 per centum in addition of such excess.

(d) SPECIAL CLASSES OF CORPORATIONS.—In the case of the following corporations the tax shall be an amount equal to 16½ per centum of the special class net income, regardless of the amount thereof:

(1) Banks, as defined in section 104.

(2) Corporations organized under the China Trade Act, 1922.

(3) Corporations which, by reason of deriving a large portion of their gross income from sources within a possession of the United States, are entitled to the benefits of section 251.

(e) FOREIGN CORPORATIONS.—

(1) In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the tax shall be an amount equal to 19 per centum of the special class net income, regardless of the amount thereof.

(2) In the case of a foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, the tax shall be as provided in section 231 (a).

(f) INSURANCE COMPANIES.—In the case of insurance companies, the tax shall be as provided in Supplement G.

(g) MUTUAL INVESTMENT COMPANIES.—In the case of mutual investment companies, as defined in Supplement Q, the tax shall be as provided in such Supplement.

(h) EXEMPT CORPORATIONS.—For corporations exempt from taxation under this title, see section 101.

(i) TAX ON PERSONAL HOLDING COMPANIES.—For surtax on personal holding companies, see Title IA.

(j) IMPROPER ACCUMULATION OF SURPLUS.—For surtax on corporations which accumulate surplus to avoid surtax on shareholders, see section 102.

SEC. 15. CORPORATE TAXES EFFECTIVE FOR TWO TAXABLE YEARS.

The taxes imposed by section 13, section 14 (except subsection (e) (2)), Supplement G, or Supplement Q, of this Act, or by section 13, section 14, or Supplement G of the Revenue Act of 1936, shall not apply to any taxable year beginning after December 31, 1939.

And the Senate agree to the same.

Amendment numbered 10:

That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment, as follows:

Omit the matter proposed to be inserted by the Senate amendment, and on page 26, after line 2, of the House bill insert the following:

(d) INVENTORIES IN CERTAIN INDUSTRIES.—

(1) PRODUCERS AND PROCESSORS OF CERTAIN NON-FERROUS METALS.—A taxpayer shall be entitled to elect the method of taking inventories provided in paragraph (2) if his principal business is—

(A) Smelting non-ferrous ores or concentrates, or refining non-ferrous metals, or both; or

(B) Producing brass, copper products, or brass products, or any one or more of them, not further advanced than rods, sheets, tubes, bars, plates, or strips.

(2) INVENTORIES OF RAW MATERIALS.—A taxpayer entitled to elect, and who has so elected, shall, in taking his inventory as of the close of any taxable year beginning after December 31, 1938, of raw materials which are—

(A) used in a business described in paragraph (1); and

(B) not yet included in goods in process or finished goods; and

(C) so intermingled that they cannot be identified with specific invoices;

treat such raw materials remaining on hand as being: First, those included in the inventory as of the beginning of the taxable year (in the order of acquisition) to the extent thereof, and second, those acquired in the taxable year, in the order of acquisition.

(3) TANNERS.—A taxpayer whose principal business is tanning hides or skins, or both, shall be entitled to elect (with respect to any taxable year beginning after December 31, 1938) the method provided in paragraph (2) as to the raw materials (including those included in goods in process and in finished goods) in the business of tanning hides, or skins, or both, if so intermingled that they cannot be identified with specific invoices.

(4) INVENTORIES AT COST.—In the case of the application of the provisions of paragraph (2) or (3) all inventories of such materials shall be taken at cost, including the inventory as of the close of the preceding taxable year.

(5) ELECTION OF METHOD.—The method provided in paragraph (2) or (3) shall not be applied unless the taxpayer, at or before the filing of his return for the preceding taxable year, has filed with the Commissioner his election to have it apply.

(6) REGULATIONS AS TO CHANGE.—The change to such method shall be made in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary to prevent the avoidance of tax.

(7) CHANGE TO DIFFERENT METHOD.—An election made under this subsection shall be irrevocable and the method so elected shall be applied in all subsequent taxable years notwithstanding any change in the principal business of the taxpayer, unless with the approval of the Commissioner change to a different method is authorized, and then upon such terms and conditions and in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe.

On page 26, line 3, of the House bill, strike out "(d)" and insert (*e*).
On page 26, line 6, of the House bill, strike out "(e)" and insert (*f*).
On page 26, line 9, of the House bill, strike out "(f)" and insert (*g*).
On page 26, line 13, of the House bill, strike out "(g)" and insert (*h*).
On page 26, line 16, of the House bill, strike out "(h)" and insert (*i*).
And the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(1) GENERAL RULE.—Debts ascertained to be worthless and charged off within the taxable year (or, in the discretion of the Commissioner, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction. This paragraph shall not apply in the case of a taxpayer, other than a bank, as defined in section 104, with respect to a debt evidenced by a security as defined in paragraph (3) of this subsection.

(2) SECURITIES BECOMING WORTHLESS.—If any securities (as defined in paragraph (3) of this subsection) are ascertained to be worthless and charged off within the taxable year and are capital assets, the loss resulting therefrom shall, in the case of a taxpayer other than a bank, as defined in section 104, for the purposes of this title, be considered as a loss from the sale or exchange, on the last day of such taxable year, of capital assets.

And the Senate agree to the same.

Amendment numbered 20:

That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows:

Restore the matter proposed to be stricken out by the Senate amendment, and on page 47, line 20, of the House bill after "years" insert *beginning after December 31, 1935* and a comma; and the Senate agree to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(e) DIVIDENDS PAID CREDIT.—For corporation dividends paid credit, see section 27.

(f) CONSENT DIVIDENDS CREDIT.—For corporation consent dividends credit, see section 28.

And the Senate agree to the same.

Amendment numbered 22:

That the House recede from its disagreement to the amendment of the Senate numbered 22, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 27. CORPORATION DIVIDENDS PAID CREDIT.

(a) DEFINITION IN GENERAL.—As used in this title with respect to any taxable year the term "dividends paid credit" means the sum of:

(1) The basic surtax credit for such year, computed as provided in subsection (b);

(2) The dividend carry-over to such year, computed as provided in subsection (c);

(3) The amount, if any, by which any deficit in the accumulated earnings and profits, as of the close of the preceding taxable year (whether beginning on, before, or after January 1, 1938), exceeds the amount of the credit provided in section 26 (c) (relating to net operating losses), for such preceding taxable year (if beginning after December 31, 1937); and

(4) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness. As used in this paragraph the term "indebtedness" means only an indebtedness of the corporation existing at the close of business on December 31, 1937, and evidenced by a bond, note, debenture, certificate of indebtedness, mortgage, or deed of trust, issued by the corporation and in existence at the close of business on December 31, 1937, or by a bill of exchange accepted by the corporation prior to, and in existence at, the close of business on such date. Where the indebtedness is for a principal sum, with interest, no credit shall be allowed under this paragraph for amounts used or set aside to pay such interest.

(b) BASIC SURTAX CREDIT.—As used in this title the term "basic surtax credit" means the sum of:

(1) The dividends paid during the taxable year, increased by the consent dividends credit provided in section 28, and reduced by the amount of the credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations;

(2) In the case of a taxable year beginning after December 31, 1938, the net operating loss credit provided in section 26 (c) (1);

(3) The bank affiliate credit provided in section 26 (d).

The aggregate of the amounts under paragraphs (2) and (3) shall not exceed the adjusted net income for the taxable year.

(c) DIVIDEND CARRY-OVER.—There shall be computed with respect to each taxable year of a corporation a dividend carry-over to such year from the two preceding taxable years, which shall consist of the sum of—

(1) The amount of the basic surtax credit for the second preceding taxable year, reduced by the adjusted net income for such year, and further reduced by the amount, if any, by which the adjusted net income for the first preceding taxable year exceeds the sum of—

(A) The basic surtax credit for such year; and

(B) The excess, if any, of the basic surtax credit for the third preceding taxable year (if not beginning before January 1, 1936) over the adjusted net income for such year; and

(2) The amount, if any, by which the basic surtax credit for the first preceding taxable year exceeds the adjusted net income for such year.

In the case of a preceding taxable year, referred to in this subsection, which begins in 1936 or 1937, the adjusted net income shall be the adjusted net income as defined in section 14 of the Revenue Act of 1936, and the basic surtax credit shall be only the dividends paid credit computed under

the Revenue Act of 1936 without the benefit of the dividend carry-over provided in section 27 (b) of such Act.

(d) DIVIDENDS IN KIND.—If a dividend is paid in property other than money (including stock of the corporation if held by the corporation as an investment) the amount with respect thereto which shall be used in computing the basic surtax credit shall be the adjusted basis of the property in the hands of the corporation at the time of the payment, or the fair market value of the property at the time of the payment, whichever is the lower.

(e) DIVIDENDS IN OBLIGATIONS OF THE CORPORATION.—If a dividend is paid in obligations of the corporation, the amount with respect thereto which shall be used in computing the basic surtax credit shall be the face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. If the fair market value of any such dividend paid in any taxable year of the corporation beginning after December 31, 1935, is lower than the face value, then when the obligation is redeemed by the corporation in a taxable year of the corporation beginning after December 31, 1937, the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall be treated as a dividend paid in the taxable year in which the redemption occurs.

(f) TAXABLE STOCK DIVIDENDS.—In case of a stock dividend or stock right which is a taxable dividend in the hands of shareholders under section 115 (f), the amount with respect thereto which shall be used in computing the basic surtax credit shall be the fair market value of the stock or the stock right at the time of the payment.

(g) DISTRIBUTIONS IN LIQUIDATION.—In the case of amounts distributed in liquidation the part of such distribution which is properly chargeable to the earnings or profits accumulated after February 28, 1913, shall, for the purposes of computing the basic surtax credit under this section, be treated as a taxable dividend paid.

(h) PREFERENTIAL DIVIDENDS.—The amount of any distribution (although each portion thereof is received by a shareholder as a taxable dividend), not made in connection with a consent distribution (as defined in section 28 (a) (4)), shall not be considered as dividends paid for the purpose of computing the basic surtax credit, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference. For a distribution made in connection with a consent distribution, see section 28.

(i) NONTAXABLE DISTRIBUTIONS.—If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this title for the period in which the distribution is made, such part shall not be included in computing the basic surtax credit.

SEC. 28. CONSENT DIVIDENDS CREDIT.

(a) DEFINITIONS.—As used in this section—

(1) CONSENT STOCK.—The term "consent stock" means the class or classes of stock entitled, after the payment of preferred dividends (as defined in paragraph (2)), to a share in the distribution (other than in complete or partial liquidation) within the taxable year of

all the remaining earnings or profits, which share constitutes the same proportion of such distribution regardless of the amount of such distribution.

(2) PREFERRED DIVIDENDS.—The term "preferred dividends" means a distribution (other than in complete or partial liquidation), limited in amount, which must be made on any class of stock before a further distribution (other than in complete or partial liquidation) of earnings or profits may be made within the taxable year.

(3) CONSENT DIVIDENDS DAY.—The term "consent dividends day" means the last day of the taxable year of the corporation, unless during the last month of such year there have occurred one or more days on which was payable a partial distribution (as defined in paragraph (5)), in which case it means the last of such days.

(4) CONSENT DISTRIBUTION.—The term "consent distribution" means the distribution which would have been made if on the consent dividends day (as defined in paragraph (3)) there had actually been distributed in cash and received by each shareholder making a consent filed by the corporation under subsection (d), the specific amount stated in such consent.

(5) PARTIAL DISTRIBUTION.—The term "partial distribution" means such part of an actual distribution, payable during the last month of the taxable year of the corporation, as constitutes a distribution on the whole or any part of the consent stock (as defined in paragraph (1)), which part of the distribution, if considered by itself and not in connection with a consent distribution (as defined in paragraph (4)), would be a preferential distribution, as defined in paragraph (6).

(6) PREFERENTIAL DISTRIBUTION.—The term "preferential distribution" means a distribution which is not pro rata, or which is with preference to any share of stock as compared with other shares of the same class, or to any class of consent stock as compared with any other class of consent stock.

(b) CORPORATIONS NOT ENTITLED TO CREDIT.—A corporation shall not to be entitled to a consent dividends credit with respect to any taxable year—

(1) Unless, at the close of such year, all preferred dividends (for the taxable year and, if cumulative, for prior taxable years) have been paid; or

(2) If, at any time during such year, the corporation has taken any steps in, or in pursuance of a plan of, complete or partial liquidation of all or any part of the consent stock.

(c) ALLOWANCE OF CREDIT.—There shall be allowed to the corporation, as a part of its basic surtax credit for the taxable year, a consent dividends credit equal to such portion of the total sum agreed to be included in the gross income of shareholders by their consents filed under subsection (d) as it would have been entitled to include in computing its basic surtax credit if actual distribution of an amount equal to such total sum had been made in cash and each shareholder making such a consent had received, on the consent dividends day, the amount specified in the consent.

(d) SHAREHOLDERS' CONSENTS.—The corporation shall not be entitled to a consent dividends credit with respect to any taxable year—

(1) Unless it files with its return for such year (in accordance with regulations prescribed by the Commissioner with the approval of the Secretary) signed consents made under oath by persons who

were shareholders, on the last day of the taxable year of the corporation, of any class of consent stock; and

(2) Unless in each such consent the shareholder agrees that he will include as a taxable dividend, in his return for the taxable year in which or with which the taxable year of the corporation ends, a specific amount; and

(3) Unless the consents filed are made by such of the shareholders and the amount specified in each consent is such, that the consent distribution would not have been a preferential distribution—

(A) If there was no partial distribution during the last month of the taxable year of the corporation, or

(B) If there was such a partial distribution, then when considered in connection with such partial distribution;

and

(4) Unless in each consent made by a shareholder who is taxable with respect to a dividend only if received from sources within the United States, such shareholder agrees that the specific amount stated in the consent shall be considered as a dividend received by him from sources within the United States; and

(5) Unless each consent filed is accompanied by cash, or such other medium of payment as the Commissioner may by regulations authorize, in an amount equal to the amount that would be required by section 143 (b) or 144 to be deducted and withheld by the corporation if the amount specified in the consent had been, on the last day of the taxable year of the corporation, paid to the shareholder in cash as a dividend. The amount accompanying the consent shall be credited against the tax imposed by section 211 (a) or 231 (a) upon the shareholder.

(e) CONSENT DISTRIBUTION AS PART OF ENTIRE DISTRIBUTION.—If during the last month of the taxable year with respect to which shareholders' consents are filed by the corporation under subsection (d) there is made a partial distribution, then, for the purposes of this title, such partial distribution and the consent distribution shall be considered as having been made in connection with each other and each shall be considered together with the other as one entire distribution.

(f) TAXABILITY OF AMOUNTS SPECIFIED IN CONSENTS.—The total amount specified in a consent filed under subsection (d) shall be included as a taxable dividend in the gross income of the shareholder making such consent, and, if the shareholder is taxable with respect to a dividend only if received from sources within the United States, shall be included in the computation of his tax as a dividend received from sources within the United States; regardless of—

(1) Whether he actually so includes it in his return; and

(2) Whether the distribution by the corporation of an amount equal to the total sum included in all the consents filed, had actual distribution been made, would have been in whole or in part a taxable dividend; and

(3) Whether the corporation is entitled to any consent dividends credit by reason of the filing of such consents, or to a credit less than the total sum included in all the consents filed.

(g) CORPORATE SHAREHOLDERS.—If the shareholder who makes the consent is a corporation, the amount specified in the consent shall be considered as part of its earnings or profits for the taxable year, and shall be included in the computation of its accumulated earnings and profits.

(h) BASIS OF STOCK IN HANDS OF SHAREHOLDERS.—The amount specified in a consent made under subsection (d) shall, for the purpose of adjusting the basis of the consent stock with respect to which the consent was given, be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only in an amount which bears the same ratio to the consent dividends credit of the corporation as the amount of such shareholder's consent stock bears to the total amount of consent stock with respect to which consents are made.

(i) EFFECT ON CAPITAL ACCOUNT OF CORPORATION.—The amount of the consent dividends credit allowed under subsection (c) shall be considered as paid in surplus or as a contribution to the capital of the corporation, and the accumulated earnings and profits as of the close of the taxable year shall be correspondingly reduced.

(j) AMOUNTS NOT INCLUDED IN SHAREHOLDER'S RETURN.—The failure of a shareholder of consent stock to include in his gross income for the proper taxable year the amount specified in the consent made by him and filed by the corporation, shall have the same effect, with respect to the deficiency resulting therefrom, as is provided in section 272 (f) with respect to a deficiency resulting from a mathematical error appearing on the face of the return.

And the Senate agree to the same.

Amendment numbered 27:

That the House recede from its disagreement to the amendment of the Senate numbered 27, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *(e)*; and the Senate agree to the same.

Amendment numbered 42:

That the House recede from its disagreement to the amendment of the Senate numbered 42, and agree to the same with an amendment, as follows:

On page 8 of the Senate engrossed amendments, line 13, strike out "7" and insert *8*; and the Senate agree to the same.

Amendment numbered 44:

That the House recede from its disagreement to the amendment of the Senate numbered 44, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: , *(17)*, *or (18)*; and the Senate agree to the same.

Amendment numbered 47:

That the House recede from its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(18) PROPERTY RECEIVED IN CERTAIN CORPORATE LIQUIDATIONS.—If the property was acquired by a shareholder in the liquidation of a corporation in cancellation or redemption of stock with respect to which gain was realized, but with respect to which, as the result of an election made by him under paragraph (7) of section 112 (b), the extent to which gain was recognized was determined

under such paragraph, then the basis shall be the same as the basis of such stock cancelled or redeemed in the liquidation, decreased in the amount of any money received by him, and increased in the amount of gain recognized to him.

And the Senate agree to the same.

Amendment numbered 52:

That the House recede from its disagreement to the amendment of the Senate numbered 52, and agree to the same with an amendment, as follows:

Omit the matter proposed to be inserted by the Senate amendment, and on page 95 of the House bill, after line 25, insert the following:

(7) ELECTION AS TO RECOGNITION OF GAIN IN CERTAIN CORPORATE LIQUIDATIONS.—

(A) GENERAL RULE.—In the case of property distributed in complete liquidation of a domestic corporation, if—

(i) the liquidation is made in pursuance of a plan of liquidation adopted after the date of the enactment of this Act, whether the taxable year of the corporation began on, before, or after January 1, 1938; and

(ii) the distribution is in complete cancellation or redemption of all the stock, and the transfer of all the property under the liquidation occurs within the month of December, 1938—

then in the case of each qualified electing shareholder (as defined in subparagraph (C)) gain upon the shares owned by him at the time of the adoption of the plan of liquidation shall be recognized only to the extent provided in subparagraphs (E) and (F).

(B) EXCLUDED CORPORATION.—The term "excluded corporation" means a corporation which at any time between April 9, 1938, and the date of the adoption of the plan of liquidation, both dates inclusive, was the owner of stock possessing 50 per centum or more of the total combined voting power of all classes of stock entitled to vote on the adoption of such plan.

(C) QUALIFIED ELECTING SHAREHOLDERS.—The term "qualified electing shareholder" means a shareholder (other than an excluded corporation) of any class of stock (whether or not entitled to vote on the adoption of the plan of liquidation) who is a shareholder at the time of the adoption of such plan, and whose written election to have the benefits of subparagraph (A) has been made and filed in accordance with subparagraph (D), but—

(i) in the case of a shareholder other than a corporation, only if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 per centum of the total combined voting power (exclusive of voting power possessed by stock owned by corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation; or

(ii) in the case of a shareholder which is a corporation, only if written elections have been so filed by corporate shareholders (other than an excluded corporation) which

at the time of the adoption of such plan of liquidation are owners of stock possessing at least 80 per centum of the total combined voting power (exclusive of voting power possessed by stock owned by an excluded corporation and by shareholders who are not corporations) of all classes of stock entitled to vote on the adoption of such plan of liquidation.

(D) MAKING AND FILING OF ELECTIONS.—The written elections referred to in subparagraph (C) must be made and filed in such manner as to be not in contravention of regulations prescribed by the Commissioner with the approval of the Secretary. The filing must be within thirty days after the adoption of the plan of liquidation, and may be by the liquidating corporation or by the shareholder.

(E) NONCORPORATE SHAREHOLDERS.—In the case of a qualified electing shareholder other than a corporation—

(i) There shall be recognized, and taxed as a dividend, so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation accumulated after February 28, 1913, such earnings and profits to be determined as of December 31, 1938, but without diminution by reason of distributions made during the month of December, 1938; and

(ii) There shall be recognized, and taxed as short-term or long-term capital gain, as the case may be, so much of the remainder of the gain as is not in excess of the amount by which the value of that portion of the assets received by him which consists of money, or of stock or securities acquired by the corporation after April 9, 1938, exceeds his ratable share of such earnings and profits.

(F) CORPORATE SHAREHOLDERS.—In the case of a qualified electing shareholder which is a corporation the gain shall be recognized only to the extent of the greater of the two following—

(i) The portion of the assets received by it which consists of money, or of stock or securities acquired by the liquidating corporation after April 9, 1938; or

(ii) Its ratable share of the earnings and profits of the liquidating corporation accumulated after February 28, 1913, such earnings and profits to be determined as of December 31, 1938, but without diminution by reason of distributions made during the month of December, 1938.

And the Senate agree to the same.

Amendment numbered 54:

That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *the gain recognized resulting from such distribution shall be considered as a short-term capital gain—*

(1) Unless such liquidation is completed before July 1, 1938; or

(2) Unless (if it is established to the satisfaction of the Commissioner by evidence submitted before July 1, 1938, that due to the laws of the foreign country in which such corporation is incorpo-

rated, or for other reason, it is or will be impossible to complete the liquidation of such company before such date) the liquidation is completed on or before such date as the Commissioner may find reasonable, but not later than December 31, 1938; and the Senate agree to the same.

Amendment numbered 58:

That the House recede from its disagreement to the amendment of the Senate numbered 58, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *18 months, if and to the extent such gain is taken into account in computing net income*; and the Senate agree to the same.

Amendment numbered 60:

That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *18 months, if and to the extent such loss is taken into account in computing net income*; and the Senate agree to the same.

Amendment numbered 62:

That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *18 months, if and to the extent such gain is taken into account in computing net income*; and the Senate agree to the same.

Amendment numbered 64:

That the House recede from its disagreement to the amendment of the Senate numbered 64, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *18 months, if and to the extent such loss is taken into account in computing net income*; and the Senate agree to the same.

Amendment numbered 69:

That the House recede from its disagreement to the amendment of the Senate numbered 69, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

100 per centum if the capital asset has been held for not more than 18 months;

66⅔ per centum if the capital asset has been held for more than 18 months but not for more than 24 months;

50 per centum if the capital asset has been held for more than 24 months.

And the Senate agree to the same.

Amendment numbered 72:

That the House recede from its disagreement to the amendment of the Senate numbered 72, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *30*; and the Senate agree to the same.

Amendment numbered 73:

That the House recede from its disagreement to the amendment of the Senate numbered 73, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(2) IN CASE OF NET LONG-TERM CAPITAL LOSS.—If for any taxable year a taxpayer (other than a corporation) sustains a net long-term capital loss, there shall be levied, collected, and paid, in lieu of the tax imposed by sections 11 and 12, a tax determined as follows, if and only if such tax is greater than the tax imposed by such sections:

A partial tax shall first be computed upon the net income increased by the amount of the net long-term capital loss, at the rates and in the manner as if this subsection had not been enacted, and the total tax shall be the partial tax minus 30 per centum of the net long-term capital loss.

And the Senate agree to the same.

Amendment numbered 79:

That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment, as follows:

Omit the matter proposed to be inserted by the Senate amendment and on page 89, after line 25, of the House bill insert the following:

SEC. 106. CLAIMS AGAINST UNITED STATES INVOLVING ACQUISITION OF PROPERTY.

In the case of amounts (other than interest) received by a taxpayer from the United States with respect to a claim against the United States involving the acquisition of property and remaining unpaid for more than fifteen years, the portion of the tax imposed by section 12 attributable to such receipt shall not exceed 30 per centum of the amount (other than interest) so received.

And the Senate agree to the same.

Amendment numbered 88:

That the House recede from its disagreement to the amendment of the Senate numbered 88, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *a street, suburban, or interurban electric railway, or a street or suburban trackless trolley system of transportation, or a street or suburban bus system of transportation operated as part of a street or suburban electric railway or trackless trolley system*; and the Senate agree to the same

Amendment numbered 105:

That the House recede from its disagreement to the amendment of the Senate numbered 105, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *16½*; and the Senate agree to the same.

Amendment numbered 112:

That the House recede from its disagreement to the amendment of the Senate numbered 112, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *16½*; and the Senate agree to the same.

Amendment numbered 115:

That the House recede from its disagreement to the amendment of the Senate numbered 115, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *16½ per centum thereof*; and the Senate agree to the same.

Amendment numbered 150:

That the House recede from its disagreement to the amendment of the Senate numbered 150, and agree to the same with an amendment, as follows:

Restore the matter proposed to be stricken out by the Senate amendment and on page 263, line 20, of the House bill strike out "16" and insert in lieu thereof *16½*; and the Senate agree to the same.

Amendment numbered 152:

That the House recede from its disagreement to the amendment of the Senate numbered 152, and agree to the same with an amendment, as follows:

On page 40 of the Senate engrossed amendments, line 8, strike out "(7)" and insert *(8)*; and the Senate agree to the same.

Amendment numbered 157:

That the House recede from its disagreement to the amendment of the Senate numbered 157, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *27 (a) without the benefit of paragraphs (3) and (4) thereof*; and the Senate agree to the same.

Amendment numbered 167:

That the House recede from its disagreement to the amendment of the Senate numbered 167, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 501. ESTATE TAX RETURNS.

Section 304 (b) of the Revenue Act of 1926, as amended (relating to the amount of gross estate requiring the filing of a return), is amended by striking out "$100,000" and inserting in lieu thereof "the amount of the specific exemption provided in section 303 (a) (4)".

SEC. 502. RETURNS OF ADDITIONAL ESTATE TAX.

Section 403 of the Revenue Act of 1932, as amended, relating to returns of the additional estate tax, is amended by striking out "$40,000" and inserting in lieu thereof "the amount of the specific exemption provided in section 401 (c)".

SEC. 503. EXTENSIONS OF TIME FOR PAYMENT OF ESTATE TAX.

Section 305 (b) of the Revenue Act of 1926, as amended, is amended to read as follows:

"(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed ten years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in sections 310 (a) and 311 (b), shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension."

SEC. 504. RATE OF INTEREST ON EXTENSIONS OF TIME FOR PAYMENT OF ESTATE TAX.

Section 305 (c) of the Revenue Act of 1926, as amended, is amended by inserting at the end thereof the following new sentence: "In the case of any such extension granted after March 31, 1938, the rate of interest shall be 4 per centum per annum."

And the Senate agree to the same.

Amendment numbered 168:

That the House recede from its disagreement to the amendment of the Senate numbered 168, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *505*; and the Senate agree to the same.

Amendment numbered 169:

That the House recede from its disagreement to the amendment of the Senate numbered 169, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"(b) GIFTS LESS THAN $4,000.—In the case of gifts (other than gifts in trust or of future interests in property) made to any person by the donor during the calendar year, the first $4,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year."

And the Senate agree to the same.

Amendment numbered 199:

That the House recede from its disagreement to the amendment of the Senate numbered 199, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: "*The privileges granted under this section in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under this section shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions.*".

And the Senate agree to the same.

Amendment numbered 201:

That the House recede from its disagreement to the amendment of the Senate numbered 201, and agree to the same with an amendment, as follows:

Restore the matter proposed to be stricken out by the Senate amendment, and on page 305, line 1, of the House bill strike out "708" and insert in lieu thereof *706*; and the Senate agree to the same.

Amendment numbered 202:

That the House recede from its disagreement to the amendment of the Senate numbered 202, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *707*; and the Senate agree to the same.

Amendment numbered 206:

That the House recede from its disagreement to the amendment of the Senate numbered 206, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *708*; and the Senate agree to the same.

Amendment numbered 207:

That the House recede from its disagreement to the amendment of the Senate numbered 207, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following: *709*; and the Senate agree to the same.

Amendment numbered 208:

That the House recede from its disagreement to the amendment of the Senate numbered 208, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 710. TAX ON DISTILLED SPIRITS.

(a) Section 600 (a) (4) of the Revenue Act of 1918, as amended, is amended to read as follows:

"(4) On and after January 12, 1934, and until July 1, 1938, $2.00, and on and after July 1, 1938, $2.25, on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon."

(b) Section 600 (c) of such Act, as amended, is amended by striking out "$2.00 per wine gallon" and inserting in lieu thereof "$2.25 per wine gallon".

(c) Section 4 of the Liquor Taxing Act of 1934 is amended by striking out "$2.00" and inserting in lieu thereof "$2.25".

(d) The amendments made by this section shall not apply to brandy and the rates of tax applicable to such brandy shall be the rates applicable without regard to such amendments.

And the Senate agree to the same.

Amendment numbered 211:

That the House recede from its disagreement to the amendment of the Senate numbered 211, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 711. EXEMPTION FROM STAMP TAX ON CERTAIN TRANSFERS OF STOCKS AND BONDS.

(a) Subdivision 3 of Schedule A of Title VIII of the Revenue Act of 1926, as amended, is amended by inserting at the end thereof the following new paragraphs:

"The tax shall not be imposed upon deliveries or transfers of shares or certificates—

"(1) From the owner to a custodian if under a written agreement between the parties the shares or certificates are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

"(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian.

No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

"Any person who, with intent to evade the tax provided in this subdivision, falsely makes a certificate accompanying any delivery or transfer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $1,000, or imprisoned not more than six months, or both."

(b) Subdivision 9 of Schedule A of Title VIII of the Revenue Act of 1926, as amended, is amended by inserting at the end thereof the following new paragraphs:

"The tax shall not be imposed upon deliveries or transfers of instruments—

"(1) From the owner to a custodian if under a written agreement between the parties the instruments are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner;

"(2) From such custodian to a registered nominee of such custodian, or from one such nominee to another such nominee, if in either case the instruments continue to be held by such nominee for the same purpose for which they would be held if retained by such custodian; or from such nominee to such custodian.

No exemption shall be granted under this paragraph unless the deliveries or transfers are accompanied by a certificate setting forth such facts as the Commissioner, with the approval of the Secretary, may by regulation prescribe as necessary for the evidencing of the right to such exemption. No delivery or transfer to a nominee shall be exempt under this paragraph unless such nominee, in accordance with regulations prescribed by the Commissioner, with the approval of the Secretary, is registered with the Commissioner.

"Any person who, with intent to evade the tax provided in this subdivision, falsely makes a certificate accompanying any delivery or transfer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $1,000, or imprisoned not more than six months, or both."

(c) The amendments made by this section shall be effective with respect to transfers or deliveries made after June 30, 1938.

And the Senate agree to the same.

Amendment numbered 214:

That the House recede from its disagreement to the amendment of the Senate numbered 214, and agree to the same with an amendment, as follows:

On page 59, line 19, of the Senate engrossed amendments strike out "714" and insert in lieu thereof *713*; and the Senate agree to the same.

Amendment numbered 215:

That the House recede from its disagreement to the amendment of the Senate numbered 215, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 802. APPROVAL OF CLOSING AGREEMENTS.

Section 606 (b) of the Revenue Act of 1928 is amended by striking out "is approved by the Secretary, or the Under Secretary", and inserting in lieu thereof the following: "is approved by the Secretary, the Under Secretary, or an Assistant Secretary".

And the Senate agree to the same.

Amendment numbered 231:

That the House recede from its disagreement to the amendment of the Senate numbered 231, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 815. COMPROMISE BEFORE SUIT.

Section 3229 of the Revised Statutes is amended by striking out "with the advice and consent of the Secretary of the Treasury" and inserting in lieu thereof "with the approval of the Secretary of the Treasury, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury".

And the Senate agree to the same.

Amendment numbered 232:

That the House recede from its disagreement to the amendment of the Senate numbered 232, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 816. EXTENSION OF TIME FOR PAYMENT OF DEFICIENCIES APPROVED BY COMMISSIONER.

The requirement of section 272 (j) of the Revenue Act of 1936, 1934, 1932, and 1928, section 274 (k) of the Revenue Act of 1926, as amended, section 274 (g) of the Revenue Act of 1924, section 250 (f) of the Revenue Act of 1921, section 513 (i) of the Revenue Act of 1932, and section 308 (i) of the Revenue Act of 1926, of approval by the Secretary of extension of time for payment of deficiency in income, estate, or gift tax shall not apply after thirty days after the date of the enactment of this Act, but the approval shall be by the Commissioner under regulations prescribed by the Commissioner with the approval of the Secretary.

And the Senate agree to the same.

Amendment numbered 233:

That the House recede from its disagreement to the amendment of the Senate numbered 233, and agree to the same with an amendment, as follows:

On page 65, line 18, of the Senate engrossed amendments strike out "818" and insert in lieu thereof *817*; and the Senate agree to the same.

Amendment numbered 234:

That the House recede from its disagreement to the amendment of the Senate numbered 234, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 818. TAXES OF INSOLVENT BANKS.

Section 22 of the Act of March 1, 1879 (20 Stat. 351; 12 U. S. C. 570), is amended to read as follows:

"SEC. 22. (a) Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and

making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

"(b) Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, such individual or corporate trustee or such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necessary for the full payment thereof.

"(c) Any such tax so collected shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes, but tax so abated or refunded after the date of the enactment of the Revenue Act of 1938 shall be reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid. The running of the statute of limitations on the making of assessment and collection shall be suspended during, and for ninety days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax which has been abated may be reassessed and collected during the time within which, had there been no abatement, collection might have been made.

"(d) This section shall not apply to any tax imposed by the Social Security Act."

And the Senate agree to the same.

Amendment numbered 235:

That the House recede from its disagreement to the amendment of the Senate numbered 235, and agree to the same with an amendment, as follows:

On page 68, line 4, of the Senate engrossed amendments strike out "820" and insert in lieu thereof *819*; and the Senate agree to the same.

Amendment numbered 236:

That the House recede from its disagreement to the amendment of the Senate numbered 236, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 820. MITIGATION OF EFFECT OF LIMITATION AND OTHER PROVISIONS IN INCOME TAX CASES.

(a) DEFINITIONS.—For the purpose of this section—

(1) DETERMINATION.—The term "determination under the income tax laws" means—

(A) A closing agreement made under section 606 of the Revenue Act of 1928, as amended;

(B) A decision by the Board of Tax Appeals or a judgment, decree, or other order by any court of competent jurisdiction, which has become final; or

(C) A final disposition by the Commissioner of a claim for refund. For the purposes of this section a claim for refund shall be deemed finally disposed of by the Commissioner—

(i) as to items with respect to which the claim was allowed, upon the date of allowance of refund or credit or upon the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(ii) as to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Commissioner in reduction of the refund or credit, upon expiration of the time for instituting suit with respect thereto (unless suit is instituted prior to the expiration of such time).

Such term shall not include any such agreement made, or decision, judgment, decree, or order which has become final, or claim for refund finally disposed of, prior to ninety days after the date of the enactment of this Act.

(2) TAXPAYER.—Notwithstanding the provisions of section 901, the term "taxpayer" means any person subject to a tax under the applicable Revenue Act.

(3) RELATED TAXPAYER.—The term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination specified in subsection (b) (1), (2), (3), or (4) is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance therein referred to was made, in one of the following relationships: (A) husband and wife; (B) grantor and fiduciary; (C) grantor and beneficiary; (D) fiduciary and beneficiary, legatee, or heir; (E) decedent and decedent's estate; or (F) partner.

(b) CIRCUMSTANCES OF ADJUSTMENT.—When a determination under he income tax laws—

(1) Requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer; or

(2) Allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer; or

(3) Requires the exclusion from gross income of an item with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year or from the gross income of a related taxpayer; or

(4) Allows or disallows any of the additional deductions allowable in computing the net income of estates or trusts, or requires or denies any of the inclusions in the computation of net income of

beneficiaries, heirs, or legatees, specified in section 162 (b) and (c) of this Act, and corresponding sections of prior revenue Acts, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer; or

(5) Determines the basis of property for depletion, exhaustion, wear and tear, or obsolescence, or for gain or loss on a sale or exchange, and in respect of any transaction upon which such basis depends there was an erroneous inclusion in or omission from the gross income of, or an erroneous recognition or nonrecognition of gain or loss to, the taxpayer or any person who acquired title to such property in such transaction and from whom mediately or immediately the taxpayer derived title subsequent to such transaction—

and, on the date the determination becomes final, correction of the effect of the error is prevented by the operation (whether before, on, or after the date of enactment of this Act) of any provision of the internal-revenue laws other than this section and other than section 3229 of the Revised Statutes, as amended (relating to compromises), then the effect of the error shall be corrected by an adjustment made under this section. Such adjustment shall be made only if there is adopted in the determination a position maintained by the Commissioner (in case the amount of the adjustment would be refunded or credited in the same manner as an overpayment under subsection (c)) or by the taxpayer with respect to whom the determination is made (in case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under subsection (c)), which position is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be. In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency, the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Board of Tax Appeals for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

(c) METHOD OF ADJUSTMENT.—The adjustment authorized in subsection (b) shall be made by assessing and collecting, or refunding or crediting, the amount thereof, to be ascertained as provided in subsection (d), in the same manner as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year with respect to which the error was made, and as if on the date of the determination specified in subsection (b) one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year.

(d) ASCERTAINMENT OF AMOUNT OF ADJUSTMENT.—In computing the amount of an adjustment under this section there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be (1) the tax shown by the taxpayer, with respect to whom the error was made, upon his return for such taxable year, increased by the amounts

previously assessed (or collected without assessment) as deficiencies, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (2) if no amount was shown as the tax by such taxpayer upon his return, or if no return was made by such taxpayer, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed, or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. There shall then be ascertained the increase or decrease in the tax previously determined which results solely from the correct exclusion, inclusion, allowance, disallowance, recognition, or nonrecognition, of the item, inclusion, deduction, credit, gain, or loss, which was the subject of the error. The amount so ascertained (together with any amounts wrongfully collected, as additions to the tax or interest, as a result of such error) shall be the amount of the adjustment under this section.

(e) ADJUSTMENT UNAFFECTED BY OTHER ITEMS; ETC.—The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this section, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss other than the one which was the subject of the error.

(f) NO ADJUSTMENT FOR YEARS PRIOR TO 1932.—No adjustment shall be made under this section in respect of any taxable year beginning prior to January 1, 1932.

And the Senate agree to the same.

Amendment numbered 238:

That the House recede from its disagreement to the amendment of the Senate numbered 238, and agree to the same with an amendment, as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 821. INTEREST ACCRUING AFTER OCTOBER 24, 1933, AND BEFORE AUGUST 30, 1935, ON DELINQUENT INCOME, ESTATE, AND GIFT TAXES.

Interest accruing after October 24, 1933, and prior to August 30, 1935, on delinquent income, estate, and gift taxes shall be computed at the rate of 6 per centum per annum. Any such interest accruing during such period which has been collected prior to the date of the enactment of this Act in excess of such rate shall be credited or refunded to the taxpayer, if claim therefor is filed within six months after the date of the enactment of this Act. No interest shall be allowed or paid on any such credit or refund.

And the Senate agree to the same.

Amend the table of contents to read as follows:

TABLE OF CONTENTS

TITLE I—INCOME TAX

SUBTITLE A—INTRODUCTORY PROVISIONS

SUBTITLE B—GENERAL PROVISIONS

PART I—RATES OF TAX

PART II—COMPUTATION OF NET INCOME

PART III—CREDITS AGAINST TAX

PART IV—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

PART V—RETURNS AND PAYMENT OF TAX

TITLE V—MISCELLANEOUS PROVISIONS

TITLE VI—GENERAL PROVISIONS

R. L. DOUGHTON,
THOS. H. CULLEN,
FRED M. VINSON,
JERE COOPER,
Managers on the part of the House.

PAT HARRISON,
WILLIAM H. KING,
WALTER F. GEORGE,
DAVID I. WALSH,
ARTHUR CAPPER,
A. H. VANDENBERG,
Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9682) to provide revenue, equalize taxation, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: This is a technical amendment made necessary by amendment No. 150; and the Senate recedes.

Amendments Nos. 2, 3, and 4: These amendments make clerical changes; and the House recedes.

Amendment No. 5: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 6: The House bill provided, in a general rule, for a tax rate of 20 percent on the adjusted net income of corporations having net incomes in excess of $25,000 with a reduction of 4 percent with respect to the dividends paid credit and with a reduction of 16 percent with respect to the dividends received from other domestic corporations. Thus a tax was provided which might vary from 20 to 16 percent, according to the amount of net income paid out in dividends.

Corporations with net incomes of $25,000 or less were to be taxed upon their "special class net incomes" (adjusted net income minus dividends received credit) as follows:

Twelve and one-half percent of the first $5,000 of their special class net incomes;

Fourteen percent of the next $15,000 of their special class net incomes; and

Sixteen percent on the balance of their special class net incomes in excess of $20,000.

Corporations with net incomes somewhat in excess of $25,000 were to be taxed under the general rule or under an alternative plan (if it produced a lesser tax) whereby the corporation was taxable on the first $25,000 of its net income as if such amount were its entire net income, plus a tax of 12 percent of so much of the remainder of the net income as consisted of dividends received from other corporations, plus a tax of 32 percent of the balance. This alternative tax was designed to provide for a proper transition between the tax on corporations with net incomes of less than $25,000 and the tax on corporations coming under the general rule.

In the case of corporations coming under the general rule, the House bill provided for several relief provisions with respect to the undistributed profits tax. These provisions are (1) a 2-year dividend carry-over, (2) a 1-year net operating loss carry-over, and (3) a "consent dividends credit." This last credit is allowed to a corporation on account of the amounts included by its shareholders in their incomes.

Joint-stock land banks, rental housing corporations provided for in the National Housing Act, and domestic corporations in bankruptcy or insolvent and in receivership were relieved from the undistributed-profits tax by means of a tax credit equal to 4 percent of their adjusted net income when such corporations were subject to the general rule.

Banks, China Trade Act corporations, corporations deriving a large part of their income from sources within possessions of the United States, insurance companies, and mutual investment companies were to be taxed at a flat rate of 16 percent in all cases under the House bill. Resident foreign corporations were to be taxed at 20 percent.

The Senate bill eliminated the undistributed-profits tax and provided for a tax at a uniform rate of 18 percent on the normal tax net income of all corporations. Relief was given the smaller corporations by a credit against net income of 10 percent of the amount by which $25,000 exceeded the net income.

The bill as agreed to in conference follows the plan of the House bill, retaining the principle of the undistributed-profits tax. The principal features to be noted are as follows:

First. The rate of tax on corporations coming under the general rule has been reduced from 20 to 19 percent. The tax computed at this rate is subject to reduction by 2½ percent with respect to the dividends-paid credit and by 16½ percent with respect to dividends received from other domestic corporations, instead of the percentages used in the House bill of 4 and 16 percent, respectively. The result of this plan is to bring about a maximum tax of 19 percent if no dividends are distributed, and a minimum tax of 16½ percent if the entire net income is distributed to the shareholders.

Second. Corporations with net incomes of less than $25,000 are taxed in the same manner and at the same rates as in the House bill.

Third. The alternative tax provided for in the House bill in the case of corporations with net incomes slightly in excess of $25,000 has not been changed in substance.

Fourth. In the case of corporations coming under the general rule, the relief provisions provided for in the House bill are retained. These provisions are a 2-year dividend carry-over, a 1-year net operating loss carry-over, and a "consent dividends credit." In addition, relief provisions are provided for as described under amendment No. 22, which provide relief for corporations which are in debt or which have a deficit in their accumulated earnings and profits.

Fifth. Joint-stock land banks, rental housing corporations provided for in the National Housing Act, and domestic corporations in bankruptcy, or insolvent and in receiverships, are taxable as under the House bill except that the maximum effective rate of tax on such corporations is 16½ percent instead of 16 percent.

Sixth. Banks, China Trade Act corporations, corporations deriving a large part of their income from sources within possessions of the United States, insurance companies, and mutual investment companies are taxable as under the House bill except that the rate of tax is 16½ percent instead of 16 percent.

Seventh. Resident foreign corporations are taxed at the rate of 19 percent.

Eighth. The corporate tax system which has been described is temporary in character and will not apply to any taxable year beginning after December 31, 1939.

Amendment No. 7: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 8: This Senate amendment provides that if obligations of the United States or its possessions or obligations of an instrumentality of the United States, organized under act of Congress, are deposited with a trustee, under a participation agreement under which only such obligations may be deposited, the interest thereon when distributed to the beneficiary shall be considered as having been paid directly to such beneficiary. The Senate recedes.

Amendment No. 9: This amendment provides for the taxation of future issues of obligations of the United States and Government corporations. The Senate recedes.

Amendment No. 10: This amendment provides that the cost of goods sold during any taxable year beginning after December 31, 1938, may be computed upon the last-in-first-out basis if such basis conforms as nearly as may be to the best accounting practice in the trade or business and is regularly employed in keeping the books or records of the taxpayer; and the change to such basis shall be made for any year in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary to prevent the avoidance of tax. Any taxpayer, who, for any taxable year, is permitted under the preceding sentence to change to such basis shall be considered to have made an irrevocable election with respect to such year and future taxable years and shall not be permitted to change from such basis in any subsequent taxable year.

The House recedes with an amendment which substitutes for the Senate provision a subsection providing as follows:

Certain taxpayers, with respect to certain raw materials, are entitled to elect, in taking their inventory as of the close of any taxable year beginning after December 31, 1938, to treat such raw materials remaining on hand as being, first, those included in the inventory as of the beginning of the taxable year (in the order of acquisition) to the extent thereof, and second, those acquired in the taxable year in the order of acquisition.

Taxpayers to whom this privilege is given are taxpayers whose principal business is—

(1) Smelting nonferrous ores or concentrates, or refining nonferrous metals, or both; or

(2) Producing brass, copper products, or brass products, or any one or more of them, not further advanced than rods, sheets, tubes, bars, plates, or strips.

The raw materials to which such provisions apply are raw materials which are (1) used in a business above described; and (2) not yet included in goods in process or finished goods; and (3) so intermingled that they cannot be identified with specific invoices.

A taxpayer whose principal business is tanning hides or skins, or both, shall be entitled to elect the method provided above (with respect to any taxable year beginning after December 31, 1938), as to the raw materials (including those included in goods in process and in finished goods) in the business of tanning hides, or skins, or both, if so intermingled that they cannot be identified with specific invoices.

In the case of the application of the above rules all inventories of such materials shall be taken at cost, including the inventory as of the close of the preceding taxable year.

The method above provided as to inventories of raw materials shall not be applied unless the taxpayer, at or before the filing of his return for the preceding taxable year, has filed with the Commissioner his election to have it apply.

The change to such method shall be made in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe as necessary to prevent the avoidance of tax.

An election made under this subsection shall be irrevocable and the method so elected shall be applied in all subsequent taxable years notwithstanding any change in the principal business of the taxpayer, unless with the approval of the Commissioner change to a different method is authorized, and then upon such terms and conditions and in accordance with such regulations as the Commissioner, with the approval of the Secretary, may prescribe.

Amendment No. 11: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 12: This amendment makes a clerical change; and the House recedes.

Amendments Nos. 13 and 14: The House bill provided that if any securities (defined as shares of stock or stock rights) become worthless, the resulting loss shall be considered as a loss from the sale or exchange, on the first day of the taxable year, of capital assets. Senate amendment No. 13 confines the operation of this rule to taxpayers other than corporations; and the Senate recedes. Senate amendment No. 14 substitutes the last day of the taxable year for the first day of the taxable year, as provided by the House bill; and the House recedes.

Amendment No. 15: The House bill provided that if any securities (defined as bonds and other evidences of indebtedness of corporations, with interest coupons or in registered form) become totally worthless, the resulting loss shall be considered as a loss from the sale or exchange, on the first day of the taxable year, of capital assets. The House bill further provided that if any such securities become partially worthless no deduction might be taken. The Senate amendment confines the operation of these rules to taxpayers other than corporations, and substitutes the last day of the taxable year for the first day of the taxable year, as provided by the House bill. The House recedes with an amendment confining the operation of the rule of the House bill to taxpayers other than banks as defined in section 104 of the House bill. Under the conference agreement, if such securities owned by banks, as so defined, become either totally or partially worthless, the loss will be treated in the same manner as other bad debts.

Amendments Nos. 16, 17, 32, 147, and 160: The House bill provided, in the case of the so-called "charitable contribution" deduction, that if gifts are made in property other than money the deduction shall be limited to the adjusted basis of the property in the hands of the donor or the fair market value of the property at the time of the gift, whichever is the lower. The Senate amendments strike out these provisions; and the House recedes.

Amendment No. 17: See amendment No. 16. The House recedes.

Amendments Nos. 18 and 19: These are technical amendments made necessary by amendment No. 9; and the Senate recedes.

Amendments Nos. 20, 22, and 151: Senate amendments Nos. 20 and 22 strike out certain parts of the House bill relating to the dividends paid credit provided with respect to the 20–16 tax of the House bill (which was eliminated by Senate amendment No. 6), and Senate amendment No. 151 reinserts these provisions as supplement Q (as they remained applicable for the purposes of title IA and section 102) with certain technical amendments. The Senate recedes on amendment No. 151. The House recedes on amendments Nos. 20 and 22, with amendments incorporating, with changes, the technical amendments made by the Senate, and making further amendments made necessary by the conference agreement on amendment No. 6 (corporation tax).

The changes made under the conference agreement in the dividends paid credit, as a part of the conference agreement on the corporation tax, are as follows:

(1) *Deficit credit.*—There is included in the dividends paid credit an amount equal to the excess of any deficit in accumulated earnings and profits as of the close of the preceding taxable year (whether beginning on, before, or after January 1, 1938) over the amount of the net operating loss credit allowed by section 26 (c) for such preceding taxable year (if beginning after December 31, 1937). Such a deficit can be created only by the operation of the business at a loss. A distribution to shareholders, regardless of its source, cannot create a deficit in accumulated earnings or profits. Even though a distribution out of accumulated earnings or profits so exhausts the earnings and profits account as to leave it incapable of absorbing a loss thereafter resulting from the business, the loss, and not the distribution, creates the deficit. The credit is limited to the excess of such deficit over the net operating loss credit in order to prevent a double deduction, since the net operating loss credit already forms a part of the dividends paid credit. The amount permitted to be included for the first taxable year beginning after December 31, 1937, however, will be the full amount of such deficit, since net operating losses for years beginning prior to January 1, 1938, are not allowed as a credit in the subsequent year.

(2) *Debt credit.*—There is included in the dividends paid credit amounts used or irrevocably set aside to pay or to retire indebtedness of any kind, if such amounts are reasonable with respect to the size and terms of such indebtedness. The term "indebtedness" means only an indebtedness of the corporation existing at the close of business on December 31, 1937, and evidenced by a bond, note, debenture, certificate of indebtedness, mortgage, or deed of trust, issued by the corporation and in existence at the close of business on December 31, 1937, or by a bill of exchange accepted by the corporation prior to, and in existence at, the close of business on such date. Where the indebtedness is for a principal sum, with interest, no credit is to be allowed for amounts used or set aside to pay such interest. Indebtedness incurred through the assumption of the liabilities of another cannot be considered indebtedness within the meaning of the provision, even though such assumption took place prior to January 1, 1938, unless evidenced by one of the instruments required by the provision, issued by the taxpayer

prior to, and in existence at, the close of business on December 31' 1937. Similarly, indebtedness represented by a renewal obligation issued after December 31, 1937, will not be classed as indebtedness. Nor will the issuance of a renewal obligation subsequent to December 31, 1937, be considered payment of an indebtedness.

Amendment No. 21: This amendment makes a clerical change; and the House recedes with an amendment making a further clerical change.

Amendment No. 22: See amendment No. 20.

Amendment No. 23: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 24: This amendment dispenses with the requirement of an oath with respect to individual income-tax returns, and provides that the return shall contain or be verified by a written declaration that such return is made under the penalties of perjury. The Senate recedes.

Amendment No. 25: This amendment provides that the fact that an individual's name is signed to a filed income-tax return shall be prima facie evidence for all purposes that the return was actually signed by him. The House recedes.

Amendment No. 26: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 27: This amendment makes a clerical change; and the House recedes with an amendment making a further clerical change.

Amendment No. 28: The House bill created a new subsection (c) (2) providing for an extension of time not to exceed 5 years for the payment of tax attributable to short-term or long-term capital gain derived upon complete liquidation of personal holding companies or foreign personal holding companies if request therefor was made by the taxpayer.

The Senate amendment retains this provision but eliminates the requirements for the approval of the Secretary of the Treasury to every such request. The House recedes.

Amendment No. 29: This is a technical amendment; and the House recedes.

Amendment No. 30: This amendment provides with respect to section 102 that the fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid surtax upon shareholders unless the corporation by the clear preponderance of the evidence proves to the contrary. The House recedes.

Amendment No. 31: This amendment makes a clerical change; and the House recedes.

Amendment No. 32: See amendment No. 16. The House recedes.

Amendments Nos. 33 and 34: These amendments make clerical changes; and the Senate recedes.

Amendment No. 35: This amendment makes a clerical change; and the House recedes.

Amendments Nos. 36, 37, 38, and 39: These amendments make clerical changes; and the Senate recedes.

Amendment No. 40: This is a clerical amendment made necessary by amendment No. 6; and the Senate recedes.

Amendment No. 41: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 42: This amendment provides for the nonrecognition of gain or loss in certain cases where exchanges or distributions are made in obedience to orders of the Securities and Exchange Commission. The kind of cases covered and the extent to which there will be no recognition of gain or loss are described in detail in supplement R, added by amendment No. 152.

The House recedes with a clerical amendment.

Amendment No. 43: This is a technical amendment; and the House recedes.

Amendment No. 44: This is a technical amendment; and the House recedes with an amendment making a further technical change.

Amendments Nos. 45 and 223: Amendment No. 45 adds a new provision to the House bill and is required in connection with amendment No. 223. Section 110 of the Revenue Act of 1935 amended the Revenue Act of 1934 so as to provide that on certain complete liquidations of a subsidiary by a parent corporation no gain or loss was to be recognized to the parent. In such cases the basis of the property transferred to the parent was, in its hands, the basis of the stock which the parent gave up for the property. The 1936 act superseded the 1935 act amendment as to distributions in taxable years beginning after December 31, 1935, and provided that the basis, in the hands of the parent, of the property transferred should be the basis, in the hands of the liquidating corporation, of the property transferred.

The effect of amendment No. 223 is to permit such a parent corporation to elect to have the basis provisions of the 1934 act (those which would have governed had the 1935 amendment not been superseded) apply to property received. The election may be made only with respect to property received before June 23, 1936 (the day following the enactment of the 1936 act) in a taxable year of the parent beginning after December 31, 1935. The election applies only if the liquidation was completed before June 23, 1936. The election applies to all the property received in such period and may not be made with respect to particular pieces or to particular distributions. Distributions made after the date of the enactment of the 1935 act (August 30, 1935) and prior to a taxable year of the parent beginning after December 31, 1935, were not, under the 1935 amendment or the 1936 act, tax free. Amendment No. 223 does not affect these distributions or the basis of property so received, but the fact that there were distributions during that period does not affect the recognition of gain or loss on the transfer of property or the basis thereof if received by the parent after that time in a liquidation completed prior to June 23, 1936. The parent corporation, in order to have the 1934 act basis, must affirmatively elect to have such basis apply to the property. This must be done within 180 days after the date of the enactment of the bill. Failure to elect is not an election and an election once made is irrevocable.

Amendment No. 45 preserves the applicability of the 1934 act basis provisions elected by the parent for years to which the new bill applies. The provision gives no new election for taxable years 1938 and following. Once having elected under the amendment No. 223, the election stands not only for 1936 and 1937 but also for 1938 and subsequent years. The House recedes.

Amendment No. 46: This amendment provides the basis for determining gain or loss in the case of property where exchanges or distributions are made in obedience to orders of the Securities and Exchange Commission. The kind of cases covered and the rules with respect to determination of the basis are described in detail in supplement R, added by amendment No. 152. The House recedes.

Amendment No. 47: See amendment No. 52. The House recedes with an amendment.

Amendments Nos. 48 and 49: These amendments make clerical changes; and the Senate recedes.

Amendment No. 50: Under the House bill, in the case of distributions in liquidation of a corporation, 100 percent of the gain recognized was to be taken into account in computing net income, except in the case of amounts distributed in complete liquidation as defined in section 115 (c). Under the Senate amendment, the gain recognized on a distribution in liquidation (except in complete liquidation as so defined) is to be considered as a short-term capital gain. The House recedes.

Amendment No. 51: In the case of corporations, other than foreign personal holding companies, this amendment extends the time within which complete liquidation must occur, so as to come within section 115 (c), so that in the case of liquidations begun in a taxable year beginning after December 31, 1937, such time will be 3 years in lieu of 2 years. In the case of liquidations begun in a taxable year beginning before January 1, 1938, the time is not extended and continues to be 2 years as under the 1936 act. The House recedes.

Amendments Nos. 52 and 47: Amendment No. 52 provides that in the case of the complete liquidation of a corporation begun and completed within the first taxable year of the corporation beginning after December 31, 1937, each shareholder may elect to have his gain recognized only to the extent of the amount of his ratable share of earnings and profits accumulated since February 28, 1913, or the amount of money received by him, whichever is greater. Such gain to the extent of such earnings or profits is to be taxed as a dividend, and the remainder of the recognized gain is to be taxed as a capital gain.

The House recedes with an amendment providing that the liquidation must be in pursuance of a plan of liquidation adopted after the date of the enactment of this act, regardless of whether the date of such adoption occurs within the taxable year of the corporation beginning on, before, or after January 1, 1938. The distribution must be in complete cancelation or redemption of all the stock.

Under the conference agreement the transfer of all the property under the liquidation must occur within the month of December 1938. If proper arrangements are made in good faith for the payment, after December 31, of unascertained or contingent liabilities and expenses, the requirement will be complied with.

Under the conference agreement, shareholders who may avail themselves of the benefits of the provision are divided into two groups—(1) shareholders other than corporations and (2) corporate shareholders. From the group of corporate shareholders is excluded a corporation which, at any time between April 9, 1938, and the date of the adoption of the plan of liquidation, both dates inclusive, is the owner of stock possessing 50 percent or more of the total combined voting power of all

classes of stock entitled to vote upon the adoption of such plan of liquidation.

Under the conference agreement, any shareholder in either group (whether or not entitled to vote on the adoption of the plan of liquidation) may entitle himself to the benefits of the provisions as to recognition of gain, in respect of shares owned by him at the time of the adoption of the plan of liquidation, if the following conditions are complied with:

(1) The shareholder must have made and filed a written election (which cannot be withdrawn or revoked) to have the benefits of the nonrecognition of gain provided for;

(2) Such written election must be filed by him or by the liquidating corporation with the Commissioner within 30 days after the adoption of the plan of liquidation;

(3) Such making and filing must be in a manner not in contravention of regulations prescribed by the Commissioner with the approval of the Secretary; and

(4) Such elections must have been so filed by shareholders of the same group who are owners of stock possessing at least 80 percent of the combined voting power of all classes of stock owned by shareholders of the same group on the date of, and entitled to vote upon, the adoption of the plan of liquidation.

Gain, in the case of a shareholder entitled to the benefits of the provision, will be recognized only to the extent of the greater of the following: (1) The shareholder's ratable share of the earnings and profits accumulated since February 28, 1913, or (2) the sum of the money received by him and the fair market value of any stock or securities received which were acquired by the corporation after April 9, 1938. In the case of a corporate shareholder such recognized gain is treated as capital gain. In the case of a shareholder other than a corporation, however, that portion of the recognized gain which is not in excess of his ratable share of the earnings and profits is treated and taxed to him as a dividend and the remainder as a short-term or long-term capital gain, as the case may be.

The amount taxed to the shareholder as a dividend is to be treated as a dividend for all tax purposes. Therefore, in the case of a shareholder which is a partnership or a trust, for example, the tax consequences will be the same as though a dividend had actually been received in ordinary course.

Amendment No. 47 provides for the basis in the case of property received in a liquidation described in connection with amendment No. 52. In such case the basis of property thus received by an electing shareholder is the basis of his stock canceled or redeemed, increased in the amount of gain recognized to the shareholder. The House recedes with an amendment, eliminating unnecessary language and providing that the basis of property received in cancelation or redemption of stock with respect to which gain was realized but with respect to which the extent of the recognition of such gain was determined in accordance with the conference agreement on amendment No. 52, shall be the same as the basis of the stock canceled or redeemed in the liquidation, increased in the amount of gain recognized to the shareholder, and decreased in the amount of any money received by him.

Amendments Nos. 53 and 55: These are technical amendments; and the House recedes.

Amendment No. 54: This amendment extends to July 1, 1939, the time within which liquidation of a foreign personal holding company must be completed in order for the shareholders to receive the benefits of the capital gains provisions.

The House recedes with an amendment providing that the gain resulting from a distribution in complete liquidation shall be considered a short-term capital gain, unless the liquidation was completed before July 1, 1938, or (if it is established to the satisfaction of the Commissioner by evidence submitted prior to July 1, 1938, that it is or will be impossible to complete the liquidation on or before such date) the liquidation is completed on or before such date as the Commissioner may find reasonable, but not later than December 31, 1938.

Amendment No. 55: See amendment No. 53. The House recedes.

Amendment No. 56: This amendment makes a clerical change; and the Senate recedes.

Amendments Nos. 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 77: These amendments deal with the subject of capital gains and losses in the case of taxpayers other than corporations.

HOUSE BILL

Under the House bill, capital gains and losses were divided into two groups called short-term capital gains and losses and long-term capital gains and losses. Short-term capital gains and losses were defined as those realized upon the sale or exchange of capital assets held for 1 year or less, if and to the extent such gains and losses were to be taken into account in computing net income. Long-term capital gains and losses were defined as those realized upon the sale or exchange of capital assets held for more than 1 year, if and to the extent such gains and losses were to be taken into account in computing net income. It was provided that short-term capital losses could only be offset against short-term capital gains and not against ordinary income or against long-term capital gains. However, any excess of short-term capital losses over short-term capital gains were permitted to be carried forward into the subsequent year to be applied against the short-term capital gains of that year. Where the short-term capital gains exceeded short-term capital losses, the excess was to be added to the ordinary income of the taxpayer and taxed at the full normal and surtax rates applicable.

In the case of long-term capital losses, such losses could only be offset against long-term capital gains, except that where such losses exceeded the gains, $2,000 of such excess could be charged against ordinary income and the balance carried over to the subsequent year and charged against the long-term capital gains of such year. The capital gains and losses taken into account in computing net income, in the case of long-term capital gains and losses, were reduced to percentages thereof which became less monthly as the period for which the assets were held became longer, except that in the case of assets held over 5 years a minimum of 40 percent was provided. Where the long-term capital gains (as reduced to the appropriate percentages thereof) exceeded the long-term capital losses (as reduced to the appropriate percentages thereof), the excess was to be included in net income and taxed at the regular rates. However, an alternative tax was provided with respect to a net long-term capital gain. This provision gave the taxpayer the right (if it would produce a lesser tax)

to have a partial tax computed on his net income, with the net long-term capital gain excluded, at the regular normal and surtax rates and to compute the final tax by adding to such partial tax 40 percent of the net long-term capital gain. Thus, with respect to a gain recognized on the sale of an asset held over 5 years, only 40 percent of such gain would be taken into account in computing net income, and the tax on this amount at 40 percent would result in a maximum tax of 16 percent on the actual gain.

SENATE AMENDMENTS

The Senate amendments retain the plan in the House bill of dividing capital gains and losses into two groups, namely, short-term capital gains and losses and long-term capital gains and losses. The treatment of short-term gains and losses is identical with the House bill, but short-term gains or losses are defined as gains or losses recognized on the sale or exchange of assets held for 18 months or less, instead of 1 year or less. The treatment of long-term gains and losses was different from the House bill. The percentage brackets based on the length of the holding period were eliminated and the general rule laid down that in the case of capital assets held for over 18 months only 50 percent of such gains or losses as were recognized on sales or exchanges should be taken into account in computing net income. The Senate amendments further provide for an alternative tax in case such a method would produce a lesser tax. This provision entitled the taxpayer to compute a partial tax on his net income, exclusive of net long-term capital gains, and to arrive at his final tax by adding to such partial tax 15 percent of his net long-term capital gains. Thus a maximum tax rate of 15 percent was provided for with respect to gains on the sale or exchange of assets held for more than 18 months. A consistent treatment was provided for in the case of a net long-term capital loss. In this case two computations were also provided. A tax at the regular rates was first computed after taking into account in computing net income 50 percent of the net long-term loss. A second tax was then to be computed on the net income of the taxpayer (before reducing such net income on account of the net long-term capital loss) at the regular rates and then reducing the result by a tax credit of 15 percent of the net long-term capital loss. In the case of net long-term capital losses, the Government was entitled to receive whichever tax was the greater.

The Senate amendments allow no carry-over of long-term losses for they are allowed against ordinary income.

CONFERENCE AGREEMENT

The bill as agreed to in conference provides for the following system with respect to capital gains and losses:

First. The treatment of short-term capital gains and losses is the same as provided for in the Senate amendments. The holding period is fixed at 18 months. It has already been pointed out that the treatment in the Senate amendments is the same as in the House bill except that in the latter bill the holding period was 1 year or less, whereas in the Senate amendments the holding period is 18 months or less.

Second. Long-term capital gains and losses are defined as those realized on the sale or exchange of capital assets held for more than

18 months, if and to the extent such gain or loss is taken into account in computing net income. The rule provided with respect to the percentage of long-term gain or loss to be taken into account is as follows:

Sixty-six and two-thirds percent if the capital asset has been held for more than 18 months but not for more than 24 months; and

Fifty percent if the capital asset has been held for more than 24 months.

Third. In the case of a net long-term capital gain, the tax is computed at the regular normal and surtax rates upon the net income which has been determined by including therein only the appropriate percentages of the gains or losses realized on the sale or exchange of capital assets held for more than 18 months or more than 24 months as the case may be.

Fourth. Also in the case of a net long-term capital gain, an alternative tax is provided for, computed on the net income of the taxpayer, exclusive of such net long-term capital gain, at the regular rates, plus 30 percent of the net long-term capital gain. The taxpayer is entitled to whichever tax is the lesser, whether computed under this rule or the preceding rule.

Fifth. In the case of a net long-term capital loss, the tax is computed at the regular normal and surtax rates upon the net income which has been determined by including therein only the appropriate percentages of losses or gains realized on the sale or exchange of assets held for more than 18 months or more than 24 months, as the case may be.

Sixth. Also in the case of a net long-term capital loss, an alternative tax is provided for, computed on the net income of the taxpayer, exclusive of such net long-term capital loss, at the regular rates, minus 30 percent of the net long-term capital loss. The Government is entitled in such a case to whichever tax is the greater, whether computed under this rule, or the preceding rule.

With respect to the treatment of capital gains and losses realized by corporations the House bill and the Senate amendments are identical.

In general, the conference agreement provides for a maximum tax on taxpayers other than corporations of 20 percent with respect to capital gains realized on the sale of capital assets held over 18 months and not over 24 months and of 15 percent with respect to capital gains realized on the sale of capital assets held over 24 months. The taxpayer with a small net income is given relief because on such long-term capital gains he is only compelled to include in his taxable net income 66⅔ percent of his capital gain on assets held over 18 months and not over 24 months, and 50 percent of his capital gain on capital assets held over 24 months.

The House recedes on amendments Nos. 65, 66, 70, 74, 75, 76, and 77. The Senate recedes on amendments Nos. 57, 59, 61, 63, 67, 68, and 71. The House recedes with an amendment on amendments Nos. 58, 60, 62, 64, 69, 72, and 73.

Amendment No. 78: This is a technical amendment; and the House recedes.

Amendment No. 79: This amendment provides that any amount received by a taxpayer from the United States, in a taxable year subject to the provisions of the bill, arising out of a claim against the United States from the acquisition by the latter of property belonging

to the taxpayer and which claim has remained unpaid for more than 15 years is to be treated as having been received upon the sale of a capital asset made and completed on the date of such receipt.

The House recedes with an amendment transferring this provision from section 117 to a new section 106, and provides that in the case of amounts received by a taxpayer from the United States with respect to a claim against the United States involving the acquisition of property and remaining unpaid for more than 15 years, the surtax attributable to such receipt shall not exceed 30 percent of the amount so received. In the computation of the amounts given this treatment there is excluded all interest whether included in the judgment or accruing on the judgment.

Amendments Nos. 80 and 81: These are technical amendments made necessary by reason of the changes in the House bill and the Senate amendment relating to the deduction for charitable contributions. The House recedes.

Amendment No. 82: This amendment makes a clerical change; and the House recedes.

Amendment No. 83: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 84: This amendment adds a new section which provides that for the purpose of computing net income of a corporation no gain or loss is to be recognized from the purchase and retirement completed during the years 1938 and 1939 by such corporation of its own obligations of whatever character at less or more than the par or face value of such obligations. The Senate recedes.

Amendments Nos. 85 and 86: Under the House bill the credit for foreign taxes is subject to the limitation that it shall not exceed the same proportion of the United States tax which the taxpayers' net income from sources within the foreign country bears to his entire net income. The Senate amendments have the effect of increasing the foreign tax credit in the case of corporations by reducing the denominator of the fraction used in the computation by the amount of the credit for intercorporate dividends. The Senate recedes.

Amendment No. 87: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 88: This Senate amendment extends the definition of a railroad in the section relating to the filing of consolidated returns so as to include (1) a street or suburban trackless trolley system and (2) a street or suburban bus system. The conference agreement accepts the Senate amendment with respect to trackless trolley systems but restricts the definition in the case of bus systems to those operated as a part of a street or suburban electric railway system or trackless trolley system.

Amendment No. 89: This amendment strikes out the provision of the House bill relating to cases of bankruptcy or receivership of one or more corporations in an affiliated group making a consolidated return. The Senate recedes.

Amendment No. 90: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 91: Under the House bill, a return was required to be filed for a trust having a net income of $50 or more. The Senate amendment requires a return only if the net income of the trust is $100 or more. The House recedes.

Amendment No. 92: Amendment No. 24 (on which the Senate recedes) removes the requirement that the return of an individual be made under oath. This amendment provides penalties in the case of an individual who willfully makes and subscribes a return which he does not believe to be true and correct. The Senate recedes.

Amendments Nos. 93 and 94: These amendments make clerical changes; and the Senate recedes.

Amendment No. 95: In section 148 (f) the House bill retained the requirement contained in the existing law that an annual report be made to Congress by the Secretary of the Treasury showing the names and salaries of officers and employees of corporations whose compensation exceeds a certain amount, but increased the amount from $15,000 to $75,000. There was also added a requirement that this report be made available to the public through the Department of the Treasury. The Senate amendment dispenses with the requirement that an annual report be made to Congress and provides that the Secretary shall compile from the returns made a list containing the names of and the amounts paid to each such officer and employee and the names of the paying corporations and shall make such list available to the public. The House recedes.

Amendment No. 96: Under the House bill, a trust was allowed, for the purpose of the normal tax and the surtax, in lieu of the personal exemption allowable under section 25 (b) (1), a credit of $50 against net income. The Senate amendment increases the amount of such credit from $50 to $100. The House recedes.

Amendment No. 97. The House bill provided that for taxable years beginning after December 31, 1938, an employees' trust is subject to tax under section 161 unless it is impossible at any time for any part of the trust principal or income to be used for, or diverted to, purposes other than the exclusive benefit of employees. The Senate amendment provides that an employees' trust shall be exempt from tax if at any time prior to the complete satisfaction of the pension liabilities with respect to employees under the trust it is impossible for any part of the trust fund, including principal and income, to be used for, or diverted to, any purposes other than the exclusive benefit of employees. The House recedes.

Amendments Nos. 98, 99, 100, 101, and 102: These are clerical amendments made necessary by amendment No. 40; and the Senate recedes.

Amendments Nos. 103 and 104: These are technical amendments made necessary by amendment No. 6; and the Senate recedes.

Amendment No. 105: Under the House bill the rate of tax on life-insurance companies is 16 percent. The Senate amendment makes the rate 18 percent. The House recedes with an amendment making the rate 16½ percent.

Amendments Nos. 106, 107, and 108: These are technical amendments made necessary by amendment No. 6; and the Senate recedes.

Amendment No. 109: This amendment makes a clerical change; and the Senate recedes.

Amendments Nos. 110 and 111: These are technical amendments made necessary by amendment No. 6; and the Senate recedes.

Amendment No. 112: Under the House bill the rate of tax on insurance companies other than life or mutual is 16 percent. The Senate amendment makes the rate 18 percent. The House recedes with an amendment making the rate 16½ percent.

Amendments Nos. 113 and 114: These are technical amendments made necessary by amendment No. 6; and the Senate recedes.

Amendment No. 115: Under the House bill the rate of tax on mutual insurance companies other than life is 16 percent. The Senate amendment makes the rate 18 percent. The House recedes with an amendment making the rate 16½ percent.

Amendment No. 116: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 117: This is a technical amendment made necessary by amendment No. 6; and the Senate recedes.

Amendments Nos. 118 and 119: These amendments make clerical changes; and the Senate recedes.

Amendment No. 120: This is a technical amendment made necessary by amendment No. 6; and the Senate recedes.

Amendments Nos. 121, 122, 123, 124, 125, and 126: These amendments make clerical changes; and the Senate recedes.

Amendment No. 127: This is a technical amendment made necessary by amendment No. 6; and the Senate recedes.

Amendments Nos. 128, 129, 130, 131, 132, 133, and 134: These amendments make clerical changes; and the Senate recedes.

Amendments Nos. 135 and 136: Under the House bill extensions of time for payment of deficiencies were to be granted by the Commissioner with the approval of the Secretary. Under these Senate amendments the extension is to be granted by the Commissioner under regulations prescribed by him with the approval of the Secretary. The House recedes.

Amendments Nos. 137, 138, and 139: These Senate amendments provide that a jeopardy assessment, or any unpaid portion thereof, may be abated by the Commissioner to the extent that he believes the assessment to be excessive in amount, at any time before a decision is rendered by the Board of Tax Appeals. It is also provided that the Commissioner shall notify the Board of any such abatement, and if a jeopardy assessment is abated in whole or in part the amount of the bond given to the collector shall be proportionately reduced at the request of the taxpayer. The House recedes.

Amendment No. 140: The Senate amendment increases from 3 years to 4 years the statute of limitations for the assessment of tax on the shareholder of a corporation with respect to amounts distributed in liquidation of corporations (other than foreign personal holding companies) on account of items omitted from gross income which should have been included under section 115 (c). The House recedes.

Amendments Nos. 141, 142, and 143: These amendments make clerical changes; and the House recedes.

Amendment No. 144: This is a technical amendment; and the House recedes.

Amendments Nos. 145 and 146: These amendments make clerical changes; and the Senate recedes.

Amendment No. 147: See amendment No. 16. The House recedes.

Amendments Nos. 148 and 149: These amendments make clerical changes; and the Senate recedes.

Amendment No. 150: The House bill imposed upon domestic mutual-investment companies a tax of 16 percent upon their adjusted

net income reduced by the basic-surtax credit computed without the net operating-loss credit and the bank-affiliate credit. The Senate amendment strikes out this provision and in amendment No. 6 treats these corporations like any other corporation and applies a tax of 18 percent of the normal-tax net income. The House recedes with an amendment restoring the provisions of the House bill but changing the rate from 16 to 16½ percent.

Amendment No. 151: See amendment No. 20. The Senate recedes.

Amendment No. 152: This amendment provides special tax treatment for gain or loss arising out of certain transfers of property made in obedience to orders of the Securities and Exchange Commission issued to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935—i. e., orders directed to the simplification and geographical integration of public utility company systems.

The amendment consists of three sections. Section 371, relating to nonrecognition of gain or loss, is an exception to the rule prescribed in section 112 (a) that the entire amount of the gain or loss upon the sale or exchange of property shall be recognized. The type of gain or loss covered by this exception is that arising from a disposition of assets which have appreciated or declined in value, or from the receipt of assets by shareholders upon a distribution. The section places these transactions in two categories, depending upon the parties involved. The first category consists of (1) security transactions between corporations which are members of a public utility holding company system and the holders of their stock or securities or the stock or securities of associate companies of a certain standing, and (2) transfers of property of system companies in exchange for other property other than certain kinds of property defined as "nonexempt." If any such nonexempt property is received in either a security transaction or a property-for-property exchange, gain is always recognized to the extent of the fair market value of such nonexempt property. The second category consists of exchanges or distributions where both parties are corporations which are members of a "system group"—i. e., an affiliated group among all the members of which a 90 percent common ownership of equity stock prevails. In this type of transaction no limitation is put upon the extent of nonrecognition by virtue of the kind of property involved. The type of gain or loss to which nonrecognition is extended by this section does not include the type of gain or loss involved in the extinguishment or removal of the burden of an indebtedness either through cancelation or assumption of liabilities. Regardless of the kind of transaction out of which a cancelation or assumption of liabilities arises, gain or loss will be recognized to the extent of the difference between the amount of the liability canceled or assumed (with proper adjustments for premiums or discounts) and the "cost" to the taxpayer incurred in the extinguishment of his liabilities.

Section 372 prescribes the basis of property received in these exchanges and distributions to the end that the gain or loss will be brought into account on a later transaction with respect to the property. In the case of the exchanges described in section 371 (a) and (b) the basis is determined by reference to the property disposed of. In the case of exchanges described in section 371 (d) the basis is determined by reference to the basis in the hands of the transferor.

In the case of distributions under section 371 (c) the basis of the stock upon which the distribution is made is allocated between such stock and the property distributed. In the case of distributions under section 371 (d) the basis of the property distributed is determined by reference to its basis in the hands of the transferor and the basis of the stock upon which the distribution is made is decreased under section 113 (b) (1) (D) by the amount of the property distributed.

Section 373 defines the terms which are peculiar to the substantive provisions of this amendment.

It is provided that any transaction which falls within the terms of this amendment and also within any of the provisions of section 112 (other than subsec. (b) (8)) is to be governed only by the terms of this amendment.

The House recedes with a clerical amendment.

Amendments Nos. 153 and 154: These amendments make clerical changes; and the Senate recedes.

Amendment No. 155: The Senate amendment provides that the term "personal holding company" does not include a corporation which establishes to the satisfaction of the Commissioner that it is actively and principally engaged in creating, developing, and commercializing inventions, processes, or patents, or licenses relating thereto.

The Senate recedes.

Amendment No. 156: This amendment provides that if a common parent railroad corporation of an affiliated group, making a consolidated return under section 141, satisfies the stock ownership requirement of a personal holding company and the income of such affiliated group, determined as provided in section 141, satisfies the gross income requirement of a personal holding company, then the affiliated group is taxable as a personal holding company.

The House recedes.

Amendment No. 157: This is one of the Senate amendments made necessary by reason of the transfer of the corporation dividends paid credit, by the Senate amendments, from section 27 to section 361. As a part of the conference agreement with respect to the corporation tax the House recedes with an amendment on this amendment the effect of which is to deny to personal holding companies the debt credit and the deficit credit granted in the case of corporations in general.

Amendment No. 158: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 159: The Senate amendment permits a personal holding company in determining its "undistributed title IA net income" to deduct amounts used or irrevocably set aside to pay or retire preferred stock issued prior to January 1, 1934, and containing contractual obligations enforceable by the holders of such stock for the retirement of the same on a fixed date.

The Senate recedes.

Amendment No. 160: See amendment No. 16. The House recedes.

Amendments Nos. 161, 162, 163, 164, 165, and 166: These amendments make clerical changes; and the House recedes.

Amendment No. 167: The House bill (secs. 501 and 502) combined the estate-tax schedule of the 1926 act and the estate-tax schedule

of the 1932 act, and provided, in lieu of an 80-percent credit on account of State death taxes to be taken against the 1926 estate taxes, a credit of 16½ percent to be taken against the combined taxes. Both provisions were effective with respect to estates of decedents dying after December 31, 1939. The Senate amendment struck out these provisions. The conference agreement adopts the Senate provisions.

(Section 501, Senate amendment:) This provision extends the period for which the Commissioner may extend the time for the payment of estate taxes in cases of undue hardship from 8 years to 12 years. The conference agreement fixes the period at 10 years. The Senate amendment also permits the Commissioner to require, as a condition of the extension, the executor to furnish security for the payment of the part extended. The present law provides for security in the form of a bond, not exceeding double the amount of the part of the tax extension of payment of which granted. The amendment permits security other than a bond to be furnished and leaves the amount of security to be determined by the Commissioner. The conference agreement adopts this provision.

(Section 502, Senate (Amendment:) This provision reduces from 6 percent to 4 percent interest on extended payments of estate tax if the extension is granted after March 31, 1938. The conference agreement adopts this provision.

(Sections 503, 504, and 505 of the House bill:) Under existing law the credit against the 1926 estate tax for death taxes imposed by and paid to the States is deducted after deducting the credit for payments of Federal gift taxes. The House bill provided that the credit of such local death taxes be first deducted. The Senate restored the provisions of the existing law. The conference agreement adopts the Senate provision.

(Sections 506 and 507 of the House bill:) The House bill provided that the specific exemption for estate tax should be reduced by the aggregate of amounts claimed and allowed as specific exemption, under the gift tax, for 1938 and succeeding years. The Senate amendment strikes out these sections. The conference agreement adopts the Senate provision.

(Sections 508 and 509 of House bill:) In lieu of the requirements of existing law that, in the case of the estate of a citizen or resident of the United States, a return shall be filed whenever the value of the gross estate exceeds a specified amount, the House provided for the filing of the return whenever the value of the gross estate exceeds the amount of the applicable specific exemption. The Senate amendment strikes out these provisions. The conference agreement restores the provisions with changes in section numbers.

Amendment No. 168: This amendment makes a clerical change; and the House recedes with an amendment making a further clerical change.

Amendment No. 169: Under existing law there is excluded, in ascertaining the total amount of gifts made by a donor in a given calendar year, a gift or gifts to any one person of $5,000, or less, or the first $5,000 of a gift or gifts to any one person in excess of that amount, with the exception that if the gift is of a future interest in property, no amount thereof is excluded. The House reduced the amount of the exclusion to $3,000. The Senate restored to the bill

the amount prescribed by existing law, and further provided that no amount may be excluded when the gift is made by a transfer in trust. The conference agreement fixes the amount at $4,000 and adopts the Senate provision with respect to gifts in trust.

Amendments Nos. 170, 171, 173, and 180: Section 601 of the House bill imposed a capital-stock tax applicable for the year ending June 30, 1939, and subsequent years, the capital-stock tax imposed by the Revenue Act of 1935, as amended, being applicable to the year ended June 30, 1938. The Senate amendments make the capital-stock tax imposed by the House bill applicable also to the year ending June 30, 1938, and terminate the 1935 act tax with the year ending June 30, 1937. The House recedes.

Amendments Nos. 172, 174, 175, 176, 177, and 178: Section 601 of the House bill provided for a new declaration of value for capital stock tax purposes every 3 years. The Senate amendments provide for 2-year periods instead of 3-year periods. The Senate recedes.

Amendment No. 179: Section 601 (f) of the House bill requires, for capital-stock-tax purposes, a new capital-stock valuation for 1 year, called "declaration year" of each 3-year period established by the bill. This amendment adds to section 601 (f) of the House bill a new paragraph (6), which provides that the capital-stock tax year beginning with or within an income-tax taxable year within which bankruptcy or receivership, due to insolvency, of a domestic corporation, is terminated shall constitute a declaration year, and that in such case the adjusted declared value for any subsequent year of the 3-year period shall be determined on the basis of the value declared in the return for such declaration year. The House recedes.

Amendment No. 180: See amendment No. 170. The House recedes.

Amendment No. 181: Section 602 of the House bill, imposing a new excess-profits tax, provided that the excess-profits tax imposed by the Revenue Act of 1935, as amended, should not apply with respect to any income-tax taxable year ending after June 30, 1939. The Senate amendment changed this to June 30, 1938, consistently with Senate amendments with respect to capital stock tax. The House recedes.

Amendment No. 182: This amendment provides that the tax imposed by section 603 of the Revenue Act of 1932 on toilet preparations shall not apply to articles sold by the manufacturer, producer, or importer after June 30, 1938, for 9 cents, or less. The Senate recedes.

Amendment No. 183: This amendment provides that the tax imposed by section 601 (c) (2), as amended, of the Revenue Act of 1932 on brewers' wort, malt syrup, etc., shall not apply to articles sold or imported after June 30, 1938. The House recedes.

Amendments Nos. 184 and 200: Section 707 of the House bill reduced the rate of tax on sales of produce for future delivery on commodities exchanges from 3 cents per $100 of value to 1 cent per $100 of value, effective July 1, 1938. That section also subjected to the tax so-called transferred or scratch sales. Senate amendment No. 200 strikes this provision out, and Senate amendment No. 184 terminates all taxes on sales of produce for future delivery as of July 1, 1938. The House recedes on both amendments.

Amendment No. 185: This amendment makes a clerical change; and the House recedes.

Amendment No. 186: The House bill contained no new provision with respect to whale oil and other marine oils. The Senate amendment provides that no whale oil (except sperm oil), fish oil, or marine animal oil of any kind (whether or not refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or fatty acids derived therefrom, shall be admitted to entry, after June 30, 1939, free from the tax imposed by section 601 (c) (8) of the Revenue Act of 1932, as amended, unless such oil was produced on vessels of the United States or in the United States or its possessions, from whales, fish, or marine animals or parts thereof taken and captured by vessels of the United States. The House recedes.

Amendment No. 187: This amendment imposes a tax of ½ cent per pound on imported fish meal, fish scrap, marine animal meal, and marine animal scrap. The Senate recedes.

Amendment No. 188: The House bill continued the rate of tax of 2 cents per pound imposed by section 601 (c) (8) of the Revenue Act of 1932, as amended, on imported hempseed, perilla seed, rapeseed, sesame seed, and kapok seed. The Senate amendment changes the rate of tax imposed on these seeds to the following: Hempseed, 1.24 cents per pound; perilla seed, 1.38 cents per pound; kapok seed, 2 cents per pound; rapeseed, 2 cents per pound; and sesame seed, 1.18 cents per pound. The House recedes.

Amendment No. 189: This amendment makes a clerical change; and the House recedes.

Amendment No. 190: This amendment provides that the tax imposed by section 601 (c) (8) of the Revenue Act of 1932, as amended, shall not apply to rapeseed oil imported to be used in the manufacture of rubber substitutes or lubricating oil. The amendment directs the Commissioner of Customs, with the approval of the Secretary, to prescribe methods and regulations to carry out this exemption. The House recedes.

Amendments Nos. 191 and 192: These amendments provide that the import taxes imposed by section 601 of the Revenue Act of 1932, as amended, shall not apply to any article, merchandise, or combination, by reason of the presence therein of any coconut oil produced in Guam or American Samoa, or any direct or indirect derivative of such oil. The House recedes.

Amendment No. 193: This amendment provides that changes made by the bill in section 601 (c) (8) of the Revenue Act of 1932, as amended, which contains excise taxes on certain imported articles, shall be effective July 1, 1938. The House recedes.

Amendment No. 194: Section 703 of the House bill imposed a tax on certain imported pork at a rate of 6 cents per pound and on other pork at a rate of 3 cents per pound. This amendment strikes out this tax; and the House recedes.

Amendments Nos. 195 and 196: These amendments make clerical changes; and the House recedes.

Amendment No. 197: The House bill exempted Northern white pine, Norway pine, Englemann spruce, and Western white spruce, from the tax on imported lumber imposed by section 601 (c) (6) of the Revenue Act of 1932, as amended. The Senate amendment eliminates Englemann spruce from the exemption provided by the House bill. The House recedes.

Amendment No. 198: This amendment makes a clerical change; and the House recedes.

Amendment No. 199: The House bill amended section 630 of the Revenue Act of 1932, as amended, to include within the definition of "vessels" entitled to exemptions from import and excise taxes by virtue of such section, civil aircraft employed in foreign trade or trade between United States and any of its possessions. The House bill also included aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof in the definition of "vessels of war" in such section. The Senate amendment provides that the exemption of foreign civil aircraft under such section shall not be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that the foreign country in which such aircraft is registered allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. The amendment also provides that the privileges granted under such section shall not apply after the Secretary of Commerce has advised the Secretary of the Treasury that such foreign country has discontinued or will discontinue the reciprocal privileges for aircraft of the United States. The House recedes with an amendment requiring the Secretary of Commerce to make a finding with respect to the allowance or discontinuance of reciprocal privileges granted by such foreign countries before he advises the Secretary of the Treasury concerning such privileges.

Amendment No. 200: See amendment No. 184. The House recedes.

Amendment No. 201: This amendment strikes out the provisions of the House bill which excepts from the definition of "filled cheese" under the act of June 6, 1896, substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods. The House recedes with an amendment changing the section number.

Amendment No. 202: This amendment makes a clerical change; and the House recedes with an amendment making a further clerical change.

Amendments Nos. 203, 204, and 205: The House bill removed the tax of 2 cents per thousand on plain wooden matches and the tax of one-half cent per thousand on paper matches in books. It retained the tax of 5 cents per thousand on fancy wooden matches, and wooden matches having a stained, dyed, or colored stick or stem. Senate amendment No. 203 strikes out the House provision, imposes a tax of 2 cents per thousand on both plain wooden and paper matches, and retains the 5-cent tax on fancy and colored stick wooden matches. The Senate recedes on this amendment.

Amendments Nos. 204 and 205 provide that if contracts between vendor and vendee do not permit the addition to the contract price of the increased rate of tax on paper matches the vendee is to pay the increased amount. The Senate recedes.

Amendments Nos. 206 and 207: These amendments make clerical changes; and the House recedes with amendments making further clerical changes.

Amendment No. 208: Section 712 of the House bill increased the rate of tax on distilled spirits, except brandy, from $2 to $2.25 per

proof or wine gallon. The increase was made effective July 1, 1938. This amendment strikes out the increase. The conference agreement retains the increased tax and makes clerical and drafting changes.

Amendment No. 209: This amendment reduces the tax on tires imposed by section 602 of the Revenue Act of 1932 from 2½ cents a pound to 1½ cents a pound and reduces the tax on inner tubes from 4 cents to 2½ cents a pound, the amendment being applicable to articles sold after June 30, 1938. The Senate recedes.

Amendment No. 210: This amendment provides, in the case of certain excise taxes imposed by the Revenue Act of 1932, that in the case of a sale by a manufacturer to a selling corporation the transaction shall be presumed to be otherwise than arm's length if either the manufacturer or the selling corporation owns more than 75 percent of the outstanding stock of the other, or if more than 75 percent of the outstanding stock of both corporations is owned by the same persons in substantially the same proportions. Under the amendment sales by a manufacturer to a selling corporation shall in all other cases be presumed to be at arm's length. The Senate recedes.

Amendment No. 211: This amendment adds identical language to subdivision 3 and subdivision 9 of title VIII of the Revenue Act of 1926, as amended. The two subdivisions impose stamp taxes, subdivision 3 on transfers of capital stock and similar interests and subdivision 9 on transfers of bonds and similar instruments. The matter added by the Senate amendment to the two subdivisions exempts from tax, transfers from the owner to a custodian or nominee, from custodian to nominee, or from the nominee of the owner or custodian to another nominee, if held by the custodian or nominee for the same purpose for which they would have been held by the owner had they been retained by him, or from custodian to owner, or from nominee to owner or custodian, but all such transfers or deliveries are to be accompanied by a certificate setting forth the facts. A penalty for a false certificate with intent to evade the tax is provided.

The conference agreement sets out separately the matter added to subdivisions 3 and 9, respectively. It eliminates from the exemption transfers from the owner to a nominee and from a nominee to an owner, and divides the other exemptions into two classes: (1) Between owner and custodian and (2) between custodian and his registered nominee, or from one registered nominee of the custodian to another registered nominee of the custodian. To exempt transfers of class (1) there must be a written agreement binding the custodian to hold or dispose of the securities for, and subject to the instructions of, the owner. A transfer from a nominee to an owner is not exempt. With respect to transfers of class (2) it is necessary that the securities shall be held by the nominee for the same purpose for which they would be held if retained by the custodian. Each transfer in either class must be covered by a certificate setting forth such facts as the regulations shall require. The custodians contemplated are mere custodians, like banks and trust companies which frequently act as such, and not trustees holding securities for the benefit of beneficiaries. The provisions of the Senate amendment providing criminal penalties for making false certificates accompanying the delivery or transfer and making the amendments effective with respect to deliveries or transfers made after June 30, 1938, are retained by the conference agreement.

Amendment No. 212: This amendment provides that in the case of tickets and cards of admission to a spoken play (the so-called "legitimate theater") which are sold at the box office, the admissions tax shall be based upon the price for which the ticket or card is sold. Under the present law the tax is based upon the established price. The Senate amendment applies to sales made after June 30, 1938. The House recedes.

Amendment No. 213: This amendment inserts a new section permitting the use of mechanical devices in collection of certain taxes, namely, admissions taxes and stamp taxes under the Revenue Act of 1926, as amended. The Senate recedes.

Amendment No. 214: This amendment inserts a new section (section 714), an amendment to section 616 of the Revenue Act of 1932, so as to exempt electric and power plants or systems owned and operated by cooperative or nonprofit corporations engaged in rural electrification from the tax on electrical energy imposed by section 616. The House recedes with a change in section number.

Amendment No. 215: This amendment inserts a new section (section 802), amending section 606 of the Revenue Act of 1928 so as to provide that closing agreements entered into by the Commissioner with the taxpayer need not be submitted to the Secretary or Under Secretary for approval. The House recedes with an amendment providing that closing agreements must be approved by the Secretary, the Under Secretary, or an Assistant Secretary of the Treasury.

Amendments Nos. 216, 217, 218, and 219: These amendments make clerical changes; and the House recedes.

Amendment No. 220: The House bill amended section 3184 of the Revised Statutes to provide that interest on assessments should be computed from the date of the collector's notice to the date of payment. This amendment provides that the amendment made by the House bill shall be effective only with respect to notices served or sent after the date of enactment of the bill. The House recedes.

Amendments Nos. 221 and 222: These amendments make clerical changes; and the House recedes.

Amendment No. 223: See amendment No. 45. The House recedes.

Amendments Nos. 224, 225, 226, and 227: These amendments make clerical changes; and the House recedes.

Amendment No. 228: This amendment provides that in the case of certain taxpayers, income, war-profits, and excess-profits taxes imposed by the Revenue Acts of 1917 and 1918 shall be assessed, collected, and paid without the assessment, collection, or payment of interest incurred prior to July 1, 1939, or of penalties, additional amounts, or additions to tax, incurred prior to the date of enactment of the bill. The taxpayers allowed this special treatment are:

(1) Individuals who were bona fide residents of a possession of the United States for more than 6 months during the taxable year for which such taxes are due, and who were taxable as citizens of the United States.

(2) Citizens of the United States and domestic corporations who, for the taxable year for which such taxes are due, would have been entitled to the benefits of section 262 of the Revenue Act of 1921 if such section had been in effect in such taxable year. They would have come within the provisions of such section if they derived the portion of their gross income therein specified from sources within a possession.

The amendment provides further that if such taxes are not paid on or before June 30, 1939, interest thereon shall be collected on such unpaid taxes at 6 percent from June 30, 1939, until the date of payment. Penalties, additional amounts, or additions to tax incurred after the date of enactment of the bill may also be collected. No distraint or other proceeding for the collection of such taxes is to be made, begun, or prosecuted prior to July 1, 1939. The amendment also provides for refund or credit, without interest, of any interest, penalties, additional amounts, or additions to tax paid within 2 years preceding the date of enactment of the bill by a taxpayer of the classes referred to with respect to the taxes described above, if claim therefor is filed prior to July 1, 1939. The House recedes.

Amendment No. 229: This amendment makes a clerical change; and the House recedes.

Amendment No. 230: This amendment amends section 3 of the Liquor Enforcement Act of 1936 by imposing certain penalties with respect to importing, bringing, or transporting any intoxicating liquor, otherwise than in the course of continuous interstate transportation, into any State in which all sales of intoxicating liquor, with certain exceptions, are prohibited. The Senate recedes.

Amendment No. 231: Under existing law the Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon. This amendment authorizes the Commissioner to compromise such cases under regulations prescribed by him with the approval of the Secretary. The House recedes with an amendment authorizing the Commissioner to compromise such cases with the approval of the Secretary of the Treasury, or of the Under Secretary of the Treasury or of an Assistant Secretary of the Treasury, and changing the section number.

Amendment No. 232: This amendment amends the provisions relating to extensions of time for payment of deficiencies of income tax under prior income-tax acts, back to and including the Revenue Act of 1926, the Gift Tax Act of 1932, as amended, and the present estate tax acts, back to and including estate taxes imposed by the Revenue Act of 1926. The effect of the provision is to dispense with the requirement that the Secretary approve of every extension, and substitutes therefor a requirement that extensions be approved by the Commissioner under regulations prescribed by him with the approval of the Secretary. The House recedes with an amendment which makes the change effective after 30 days after the date of enactment of the bill.

Amendment No. 233: This amendment provides that in the case of mortgages made or obligations issued by any joint-stock land bank after the date of the enactment of the act all income, except interest, derived therefrom shall be included in gross income and shall not be exempt from Federal income taxation. The House recedes with a clerical amendment.

Amendment No. 234: Section 22 of the act of March 1, 1879, provides for the abatement and remission of taxes of banks which have ceased to do business by reason of insolvency or bankruptcy, if the collection of such taxes would diminish the assets thereof necessary for the payment of depositors. This amendment extends like treatment, as respects their taxes, to trust companies engaged in

the banking business, and to arrangements whereby such insolvent banks and trust companies are restored to solvency and enabled to continue business through waiver by depositors of part of their claims, and acceptance in lieu thereof of liens against future earnings, or claims against future assets, segregated from the other assets of the concern, and held for liquidation either by such bank or trust company or by a trustee or other fiduciary (whether or not created or designated solely for this purpose) to whom transfer has been made. The amendment also provides that a tax which has, under the provisions of the section, been thus refunded, or which has been thus abated, or which, under the section before or after amendment, may not be assessed or collected, may at a later date be assessed, or reassessed, and collected, whenever collection will not diminish the assets necessary for the payment of depositors and creditors. A suspension of the running of the statute of limitations as provided for during the time assessment or collection is barred. Taxes diminishing the assets necessary for the full payment of creditors are under the amendment treated in the same manner as taxes having a like effect as respects the payment of depositors. The House recedes with an amendment changing the section number and making the following changes:

Amendment No. 235: This amendment provides for abatement of jeopardy assessments in certain cases by amending the jeopardy assessment provisions of prior income tax acts, back to and including the Revenue Act of 1926, and the gift tax act of 1932, as amended, and the present estate tax acts, back to and including the estate taxes imposed by the Revenue Act of 1926. The amendment is effective only as to jeopardy assessments made after the effective date of this bill. The amendment is similar to amendments Nos. 137, 138, and 139, dealing with income-tax liability for taxable years beginning after December 31, 1937. The House recedes with a clerical amendment.

Amendment No. 236: This amendment provides for mitigation of some of the inequities under the income-tax laws caused by the statute of limitation and other provisions which now prevent equitable adjustment of various income-tax hardships. There is no comparable provision in the House bill. Under the income-tax laws it is possible for a taxpayer or the Commissioner, after operation of the statute of limitations or some other provision of the internal-revenue laws prevents correction of an error, to obtain a double advantage by taking a position contradictory to that which caused the error. The Senate amendment was drawn to discourage this practice in specified types of cases by authorizing corrective adjustment.

The Senate amendment would work as follows: It becomes operative if (1) after the effective date of this act, there is a final "determination" under the income-tax laws which gives authoritative sanction to the inconsistent position presently maintained by the taxpayer or the Commissioner and indicates that the previous treatment of the item was erroneous under the applicable provisions of the internal-revenue laws; and (2) correction of the effect of such error is prevented by the operation of one or more provisions of the internal-revenue laws, as the running of the statute of limitations, the collateral consequences of a board of tax appeals proceeding, the execution of a closing agreement, etc., with respect to the year as to which the error was made.

The types of final determinations prerequisite to the operation of the amendment are described in subsection (a) (1). Subdivision (A) thereof, referring to closing agreements, and subdivision (B), referring to court and Board decisions, cover conventional determinations the finality of which is governed by existing provisions of law. Subdivision (C) refers to dispositions by the Commissioner of claims for refund and specifies when such dispositions shall be deemed final for the purpose of this amendment. Under its provisions the time at which a disposition in respect of a particular item becomes final depends, not only upon the action taken with respect to that item, but also upon whether the claim for refund was allowed or disallowed. The subdivision specifies when a disposition becomes final in respect of items applied by the Commissioner in reduction of the overpayment alleged in the claim for refund as well as in respect of items set forth by the taxpayer in the claim for refund. If, however, the items applied by the Commissioner to offset an alleged overpayment result in the assertion of a deficiency this subdivision has no application to such items. Subdivision (A) or (B) may become applicable in such case, depending upon the action taken with respect to the proposed deficiency.

Subsection (b) specifies the types of cases involving inconsistent action to which the amendment extends. If such inconsistent action occurs under the circumstances therein described, the amendment authorizes an adjustment to correct the effect of the error. The amount of the adjustment is ascertained and the adjustment made as follows: The tax previously determined for the taxable year in respect of which the error was made is first ascertained, and the increase or decrease in such tax which results from the correction of the error is then determined. The recomputation does not involve consideration of any other items except, of course, those items upon which the tax previously determined was based. It requires merely the ascertainment of the tax that would have been due if the item in respect of which the error was made had been correctly treated. If the treatment of any item upon which the tax previously determined was based or if the application of any provision of the internal-revenue laws with respect to such tax was dependent upon the amount of income (e. g., charitable contributions, credit for foreign taxes, earned income credit), readjustment in these particulars will be necessary in conformity with the change in income resulting from correct treatment of the item in respect of which the error was made.

If the recomputation results in an increase over the tax previously determined, such increase is considered as a deficiency determined by the Commissioner and may be assessed and collected under the established procedure for the assessment and collection of deficiencies. The taxpayer may contest the deficiency before the Board or if he chooses may pay the deficiency and later file suit for refund. Correspondingly, a decrease resulting from the recomputation is considered as an overpayment which may be recovered under established procedure. The taxpayer will file a claim for refund (unless the overpayment is refunded without such claim) and if the claim is denied or not acted upon by the Commissioner within the prescribed time, the taxpayer may then file suit for refund. Subsections (d) and (e) indicate, however, that the adjustment, both with respect to the ascertainment of the amount of the adjustment and the later pro-

ceedings for its collection or refund, is unaffected by any other items not taken into consideration in computing the tax previously determined. The amount of the adjustment, if an overpayment, may of course under established procedure be credited against any income tax then due from the taxpayer, or if a deficiency, may correspondingly be set off against any refund of income tax due to the taxpayer.

The amendment extends to certain "related" taxpayers, as defined in subsection (a) (2), such as husband and wife, or trustee and beneficiary. The problems dealt with have frequently arisen with respect to such taxpayers.

The conference agreement adopts the substance of the Senate amendment, but makes several changes. The important changes are as follows:

(1) It is provided that the section will not become operative by reason of determinations made prior to 90 days after the effective date of the act. This affords taxpayers and the Commissioner a reasonable time to decide whether they desire to discontinue proceedings already begun which may lead to determinations as defined in this section.

(2) A definition of the term "taxpayer" for the purpose of this section is inserted.

(3) Assignor and assignee, donor and donee, lessor and lessee, and claimants to ownership of the same property, are eliminated as independent categories of related taxpayers.

(4) It is made clear that no adjustment is authorized with respect to the transferor of property in a transaction upon which the basis of the property depends, when a position inconsistent with that taken by the original transferee at the time of such transaction is taken by: (*a*) Such original transferee, or (*b*) a subsequent transferee of such original transferee. Paragraph (b) (5) does not apply with respect to any position taken by such subsequent transferee where the transfer by which he received the property itself established a new basis for the property in his hands, as in the case of a sale to him by the original transferee. With respect to transferees, paragraph (b) (5) applies only where the property in the hands of a subsequent transferee (as in the case of a gift) has a substituted basis ascertained by reference to the basis in the hands of the original transferee. In addition, a clerical change alters the order of the words at the beginning of the subsection.

(5) The section is not to be operative where correction of the effect of the error is prevented by a compromise under section 3229 of the Revised Statutes, as amended.

(6) If the amount of the adjustment is considered as a deficiency, the adjustment is authorized only when the taxpayer with respect to whom the determination is made has successfully maintained a position inconsistent with the error, and if the amount of the adjustment is considered as an overpayment, the adjustment is authorized only when the Commissioner has successfully maintained the inconsistent position. If the adjustment would require the related taxpayer to pay a deficiency, the adjustment shall not be made unless the relationship, where terminable, such as that of spouses or partners, existed both in the taxable year with respect to which the error was made and at the time the taxpayer first asserted the inconsistent position.

(7) It is stated explicitly that the taxpayer with respect to whom the error was made is the taxpayer with respect to whom the adjustment is authorized. It is further provided that for the purpose of such adjustment, the periods of limitation upon assessment or refund or credit for the taxable year with respect to which the error was made shall be considered as having 1 year yet to run from the date of the determination. Accordingly, the Commissioner has at least 1 year within which to issue a notice of deficiency in respect of the amount of the adjustment, where such amount is considered as a deficiency. The issuance of such notice will, of course, in accordance with the procedure governing the assessment of deficiencies, suspend the running of the period of limitations thus provided by this subsection on the assessment of the deficiency. Similarly, the taxpayer has 1 year within which to file a claim for refund in respect of the amount of the adjustment, where such amount is considered as an overpayment. Where the amount of the adjustment is considered as a deficiency and the taxpayer chooses to pay such deficiency and contest it by way of suit for refund, he has 2 years from the date of such payment within which to file a claim for refund.

(8) It is provided that no adjustment shall be made under this section in respect of any taxable year beginning prior to January 1, 1932.

(1) The provisions which prohibit assessment and collection of tax where the effect would be to diminish the assets available for payment of creditors other than depositors have been eliminated. The result of this change is that in cases where the claims of creditors are junior to the claims of depositors, if depositors' claims would not be diminished by the payment of taxes, then the abatement of tax does not apply. If, however, creditors' and depositors' claims rank equally, taxes which would diminish the assets available for either would diminish the assets available for both, and in such cases the tax is abated.

(2) The authority to reassess tax previously abated or refunded when it later appears that collection may be made without diminishing assets necessary for payment of depositors is limited to tax abated or refunded after the date of enactment of the act.

(3) The suspension of the running of the statute of limitations against assessment and collection is extended for 90 days, to provide a reasonable time for action in those cases in which, at the time of suspension, the period for assessment or collection has almost expired.

(4) The provision with respect to social security taxes has been rewritten in order to make it clear that the section does not apply to such taxes imposed upon the bank, trust company, or trustee or agent thereof. The liability of a bank, trust company, or trustee or agent thereof, with respect to the deduction and withholding of taxes imposed upon others, or as a transferee of the assets of others, is not within the section in any event.

Amendment No. 237: The Senate inserted in the House bill a new section (sec. 822) providing that claims for payment of refund of processing tax under section 602 of the Revenue Act of 1936 placed in the mails on or before December 31, 1936, shall be held to have been filed prior to January 1, 1937. The Senate recedes.

Amendment No. 238: The Senate inserted in the House bill a new section (sec. 823) providing that interest on delinquent income, estate,

and gift taxes accruing prior to August 30, 1935, the date of the approval of the Revenue Act of 1935, be computed at the rate of 6 percent per annum instead of 1 percent a month, and that any such interest collected after October 24, 1933, in excess of such rate is to be credited or refunded, without interest, in an amount equal to the excess, if claim therefor is filed within 6 months after the date of the enactment of the Revenue Act of 1938.

The House recedes with an amendment changing the section number and limiting the provision to interest accruing after October 24, 1933, and prior to August 30, 1935, and which has been collected prior to the date of the enactment of this act.

Amendment No. 239: This amendment inserted a new section authorizing and directing the Secretary of the Treasury to conduct an investigation of the desirability and practicability of the imposition of a tax on the use of labor-saving and labor-displacing machinery and to report thereon to the Seventy-sixth Congress. The Senate recedes.

R. L. DOUGHTON,
THOS. H. CULLEN,
FRED M. VINSON,
JERE COOPER,
Managers on the part of the House.

O