

Eastern Ky. R. Co. v. Slack (C. C. Mass. 1876) Fed. Cas. No. 4,253, affirmed (1880) 100 U. S. 650, 25 L. Ed. 611; U. S. v. Brooklyn City & N. R. R. (C. C. N. Y. 1882) 14 F. 284; U. S. v. Marquette, H. & O. R. Co. (C. C. Mich. 1883) 17 F. 719, reversed (1887) 8 S. Ct. 319, 123 U. S. 722, 31 L. Ed. 302; Central Nat. Bank v. U. S. (N. Y. 1890) 137 U. S. 355, 11 S. Ct. 126, 34 L. Ed. 703, affirming (C. C. 1885) 24 F. 577; U. S. v. Louisville & N. R. Co. (C. C. Ky. 1888) 33 F. 829; U. S. v. Central Nat. Bank (D. C. N. Y. 1883) 15 F. 222; Beardsley v. New Jersey, W. L. R. Co. (1872) 35 N. J. Law (6 Vroom) 479.

§ 14. Taxable period embracing years with different laws

If a taxable period embraces portions of two calendar years for which the laws are different, the tax shall be computed as provided in section 105. (June 6, 1932, c. 209, § 14, 47 Stat. 177.)

Historical Note

Identical provisions were contained in the Revenue Act of 1928 (Act May 28, 1928, c. 852, § 14, 45 Stat. 797).

PART II—COMPUTATION OF NET INCOME

§ 21. Net income

“Net income” means the gross income computed under section 22, less the deductions allowed by section 23. (May 10, 1934, 11:40 a. m., c. 277, § 21, 48 Stat. 686.)

Historical Note

Identical provisions were contained in the Revenue Act of 1932 (Act June 6, 1932, c. 209, § 21, 47 Stat. 178) and in the Revenue Act of 1928 (Act May 29, 1928, c. 852, § 21, 45 Stat. 797).

Similar provisions were contained in the Revenue Act of 1926 (Act Feb. 26, 1926, c. 27, § 212, 44 Stat. 23) and in the Revenue Act of 1924 (Act June 2, 1924, c. 234, § 212, 43 Stat. 267).

Notes of Decisions

1. In general

Net income defined. 1 B. T. A. 326.

“Net income” is gross income as defined in section 22 of this title less allowable deductions. Farmers' Loan & Trust Co. v. U. S. (D. C. N. Y. 1925) 9 F.(2d) 688.

Individual taxpayer's “net income” is remainder of his gross income, including capital gains, after permitted deductions, including capital losses and deductions. White v. Atkins (C. C. A. Mass. 1934) 69 F.(2d) 960, aff. (D. C. 1933) 3 F. Supp. 694.

Net income, as defined in sec. 232, Act 1921 (repealed) was gross income as de-

finied in sec. 233 less deductions allowed by sec. 234. 2 B. T. A. 201.

Under the Federal Income Tax Laws of 1916, 1917, the net income of a corporation as defined therein included the amount it was compelled to pay as excess profits tax, though a later section provided that in assessing income tax the return should be credited with the amount paid as excess profits tax, so that the amount of the excess profits tax cannot be deducted in computing the state franchise tax levied under Tax Law, art. 9a. People ex rel. Barcalo Mfg. Co. v. Knapp (1919) 124 N. E. 107, 227 N. Y. 64, affirming (1919) 175 N. Y. S. 337, 187 App. Div. 89.

§ 22. Gross income

(a) General definition. “Gross income” includes gains, profits, and income derived from salaries, wages, or compensation for per-

sonal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly.

(b) Exclusions from gross income. The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(1) Life insurance. Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income);

(2) Annuities, etc. Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this title or prior income tax laws in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph;

(3) Gifts, bequests, and devises. The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

(4) Tax-free interest. Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized un-

der Act of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations enumerated in clause (A), (B), or (C) shall, in the return required by this chapter, submit a statement showing the number and amount of such obligations owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit), and in the case of obligations of a corporation organized under Act of Congress, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from the taxes imposed by this chapter;

(5) **Compensation for injuries or sickness.** Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(6) **Ministers.** The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation;

(7) **Miscellaneous items.** The following items, to the extent provided in section 116:

Earned income from sources without the United States;

Salaries of certain Territorial employees;

The income of foreign governments;

Income of States, municipalities, and other political subdivisions;

Receipts of shipowners' mutual protection and indemnity associations;

Dividends from China Trade Act corporations.

(c) **Inventories.** Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(d) **Distributions by corporations.** Distributions by corporations shall be taxable to the shareholders as provided in section 115.

(e) **Determination of gain or loss.** In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in section 111.

(f) **Gross income from sources within and without United States.** For computation of gross income from sources within and without

the United States, see section 119. (May 10, 1934, 11:40 a. m., c. 277, § 22, 48 Stat. 686.)

Historical Note

The corresponding section of the Revenue Act of 1932 (June 6, 1932, c. 209, § 22, 47 Stat. 178) was identical except for the following subdivisions:

"(b) Exclusions from Gross Income. The following items shall not be included in gross income and shall be exempt from taxation under this title:

"(1) Life insurance. Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or in installments (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income);

"(2) Annuities, etc. Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph; * * *

"(4) Tax-free interest. Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of the Federal Farm Loan Act, or under provisions of such Act as amended; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations or securities enumerated in clause (A), (B), or (C) shall, in the return required by this title, submit a statement showing the number and amount of such obligations and securities owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the

United States issued after September 1, 1917 (other than postal savings certificates of deposit), the interest shall be exempt only if and to the extent provided in the respective chapters authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from the taxes imposed by this title * * *;

"(c) Determination of Gain or Loss. In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in sections 111, 112, and 113."

The 1928 Act (May 29, 1928, c. 852, § 22, 45 Stat. 797) did not contain the last sentence in subdivision (a). In all other respects it and the 1932 Act were substantially identical except for the following provisions under subdivision (b) of the 1928 Act, which were not included in the 1932 Act:

"(6) Pensions and world war compensation payments. Amounts received as compensation, family allotments and allowances under the provisions of the War Risk Insurance and the Vocational Rehabilitation Acts or the World War Veterans' Act, 1924, or as pensions from the United States for service of the beneficiary or another in the military or naval forces of the United States in time of war, or as a State pension for services rendered by the beneficiary or another for which the State is paying a pension;

"(7) Building and loan associations. The amount received by an individual as dividends or interest from domestic building and loan associations, substantially all the business of which is confined to making loans to members, but the amount excluded from gross income under this paragraph in any taxable year shall not exceed \$300;"

For similar provisions in the Revenue Act of 1926, see Act Feb. 26, 1926, c. 27, §§ 205, 213, 233, 44 Stat. 16, 23, 41.

Other similar provisions are contained in Act June 2, 1924, c. 234, §§ 205, 213, 233, 43 Stat. 260, 267, 283, as amended Feb. 2, 1925, c. 345, § 12, 43 Stat. 997, and sections 203, 213, 233 of the Revenue Acts of

1918, 1921, as amended Sept. 19, 1922, c. 346, § 26.

Provisions specifying matters included in "net income" were contained in Act Oct. 3, 1913, c. 16, § II B, and Act Sept. 8, 1916, c. 463, § 2 (a), both of which seem to have used "net income" to designate income called gross income in later acts.

Various executions were contained in Act Oct. 3, 1913, c. 16, § II subds. B and G, 38 Stat. 167, 172, Act Sept. 8, 1916, c. 463, § 4, 39 Stat. 758, as amended by Act Oct. 3, 1917, c. 63, § 1200, 4 Stat. 329, Act Sept. 8, 1916, c. 463, § 11(b), 39 Stat. 767, and § 30, as amended by Act Oct. 3, 1917, c. 63, § 1211, 40 Stat. 336.

Cross-References

For deductions by insurance companies, see section 204 of this title.

Gross income in case of insurance companies, see section 202 of this title.

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Income of other persons was likewise taxed. *Evans v. Gore* (Ky. 1920) 40 S. Ct. 550, 253 U. S. 245, 64 L. Ed. 887, 11 A. L. R. 519, reversing (D. C. Ky. 1919) 262 F. 550. *Contra* (1919) 31 Op. Atty. Gen. 475.

Revenue Act 1918, § 213a (repealed) making salaries of federal judges subject to income tax, was void even as to judges appointed after act took effect, under Const. art. 3, § 1. *Miles v. Graham* (Md. 1925) 45 S. Ct. 601, 268 U. S. 501, 69 L. Ed. 1067, affirming (D. C. 1922) 284 F. 878. As holding the salaries of judges appointed subsequent to the enactment of the Act subject to the income tax see (1920) 32 Op. Atty. Gen. 248.

I. VALIDITY AND OPERATION IN GENERAL

1. In general

Income Tax Act 1916, c. 463, § 2 (repealed) omitting provision in Act October 3, 1913, excluding value of property acquired by gift, bequest, etc., in defining income, and sections 8 and 200 (repealed) making new provision for returns by trustees and providing for estate tax, enlarged scope of Internal Revenue Law. *Irwin v. Gavit* (C. C. A. N. Y. 1923) 295 F. 84, affirming (D. C. 1921) 275 F. 643. Reversed on other grounds (1925) 45 S. Ct. 475, 268 U. S. 161, 69 L. Ed. 897.

Whether acquisition by corporation of its own capital stock gives rise to taxable gain depends upon real nature of transaction involved. Commissioner of Internal Revenue v. S. A. Woods Mach. Co. (C. C. A. 1932) 57 F.(2d) 635, cert den (1932) 53 S. Ct. 15, 287 U. S. 613, 77 L. Ed. 532.

In determining proper treatment of amounts received by taxpayer under party-wall agreement, relation of parties to such agreement must be determined by law of state. 4 B. T. A. 341.

That transaction which clearly results in taxable income was entered into when regulation of Commissioner held such transactions to be nontaxable does not relieve parties from tax liability. 6 B. T. A. 265.

Where petitioner sustained a loss, held, no profit realized on same transaction. 11 B. T. A. 1025.

2. Validity

The corresponding section of the Revenue Act of 1918 so far as it imposed a tax on the income of judges of the courts of the United States, including their salaries, was held to violate Const. art. 3, § 1, providing that the compensation of judges shall not be diminished during their continuance in office, despite the fact that the

The salary of the President of the United States was subject to the income tax imposed by the Act of February 24, 1919, and the provision requiring the salary of the President to be included was valid and constitutional. (1919) 31 Op. Atty. Gen. 475.

Federal income tax on earnings of condemnation award transferred by court to city chamberlain in trust for remainderman held not unconstitutional as tax on exercise of city's right of eminent domain. *Buckley v. Commissioner of Internal Revenue* (C. C. A. 1933) 66 F.(2d) 394, cert den (1933) 54 S. Ct. 208, 290 U. S. 698, 78 L. Ed. 600.

3. Repeals

Repeal of wartime legislation by the Resolution of March 3, 1921, affected paragraph 8 of section 213 of the Act of 1918 (repealed). (1921) 32 Op. Atty. Gen. 505.

Sec. 213 (b) (8), Act 1918, providing exemption of \$3,500, was repealed by 1921 Act as of January 1, 1921, and soldier was not entitled to exemption for salary received between January 1, 1921, and March 8, 1921, on which date World War was declared at an end. 1 B. T. A. 448.

4. Income in general

The word "income" must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Federal Corporation Excise Tax Act (repealed). *Merchants' Loan, etc., Co. v. Smietanka* (Ill. 1921) 255 U. S. 509, 41 S. Ct. 386, 65 L. Ed. 751, 15 A. L. R. 1365; *Bowers v. Kerbaugh-Empire Co.* (N. Y. 1926) 46 S. Ct. 449, 271 U. S. 170, 70 L. Ed. 886.

"Income" is gain derived from capital, from labor, or from both combined, including profit gained through conversion

or sale of capital. *Bowers v. Kerbaugh-Empire Co.* (N. Y. 1920) 46 S. Ct. 449, 271 U. S. 170, 70 L. Ed. 886; *Sanford & Brooks Co. v. Commissioner of Internal Revenue* (C. C. A. 1929) 35 F.(2d) 312, rev on other grounds (1931) 51 S. Ct. 150, 282 U. S. 350, 75 L. Ed. 333, foll *Eisner v. Macomber* (N. Y. 1920) 40 S. Ct. 180, 252 U. S. 180, 64 L. Ed. 521; *Bowers v. Kerbaugh-Empire Co.* (N. Y. 1926) 46 S. Ct. 449, 271 U. S. 170, 70 L. Ed. 886; *Commissioner of Internal Revenue v. Simmons (Gin Co.)* (C. C. A. 1930) 43 F.(2d) 327; *Kansas City Southern Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 52 F.(2d) 372.

Prorated charge by railroad to operating expenses for 1918 and 1919, covering cost of reconstruction prior to March 1, 1913, held not nontaxable restorations to capital. *Kansas City Southern Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 52 F.(2d) 372.

"Income" is gain derived from capital, labor, or both combined, and includes profits gained through sale or conversion of capital assets and is not confined to cash. *U. S. v. Siegel* (C. C. A. Mo. 1931) 52 F.(2d) 63.

Income, to be subject to assessment for taxation, need not necessarily be received in money. *Brunton v. Commissioner of Internal Revenue* (C. C. A. 1930) 42 F.(2d) 81, certiorari denied (1930) 51 S. Ct. 101, 282 U. S. 889, 75 L. Ed. 783.

"Income" subject to taxation is gain derived from capital; a gain, a profit, something of exchangeable value, proceeding from property, severed from capital, however invested and employed, and received or drawn by recipient for his separate use, benefit, and disposal. *Commissioner of Internal Revenue v. Independent Life Ins. Co.* (C. C. A. 1933) 67 F.(2d) 470, rev on other grounds (1934) 54 S. Ct. 753, 292 U. S. 371, 78 L. Ed. 1311.

The Income Tax Acts are not to be extended by implication to incomes not reasonably within their language, even though Congress had a general intention to tax all incomes. *Smietanka v. First Trust & Savings Bank* (Ill. 1922) 42 S. Ct. 223, 257 U. S. 602, 66 L. Ed. 39, affirming (C. C. A. 1920) 268 F. 230.

In determining what constitutes income within revenue laws, general rule that taxation is practical matter and form must give way to substance is applicable. *Spring Canyon Coal Co. v. Commissioner of Internal Revenue* (C. C. A. 1930) 43 F.(2d) 78, cert den (1931) 52 S. Ct. 33, 284 U.

S. 654, 76 L. Ed. 555; *Schoenhelt v. Lucas* (C. C. A. 1930) 44 F.(2d) 476.

Amount by which corporate taxpayer's unpaid rent on building exceeded difference between depreciated cost less mortgage on its property which it conveyed to lessor who canceled such amount held not taxable income. *Dallas Transfer & Terminal Warehouse Co. v. Commissioner of Internal Revenue* (C. C. A. Tex. 1934) 70 F.(2d) 95.

The word "income" must be presumed to have been used in Income Tax Act Oct. 3, 1913 (repealed) in the sense in which the Supreme Court had theretofore defined it. *Towne v. Eisner* (D. C. N. Y. 1917) 242 F. 702, reversed on other grounds (1918) 38 S. Ct. 158, 245 U. S. 418, 62 L. Ed. 372, L. R. A. 1918D, 254.

Income Tax Act Sept. 8, 1916, § 2 (repealed) cannot be held to define the income taxable under Income Tax Act Oct. 3, 1913. *Towne v. Eisner* (D. C. N. Y. 1917) 242 F. 702, reversed on other grounds (1918) 38 S. Ct. 158, 245 U. S. 418, 62 L. Ed. 372, L. R. A. 1918D, 254.

Income tax statutes are designed to reach actual income received by taxpayer. *Bankers' Trust Co. v. Bowers* (C. C. A. N. Y. 1923) 295 F. 89, 31 A. L. R. 922, reversing (D. C. 1923) 292 F. 793.

What is taxable is the gain, profit or income derived from the sale or dealing in property, whether real or personal. The tax is to be levied on nothing else except gains, profits, and income, and upon them only when actually realized in money or in money's worth, and in determining what is included therein the courts will look through form to substance. *Safe Deposit, etc., Co. v. Miles* (D. C. Md. 1921) 273 F. 822, affirmed (1922) 42 S. Ct. 483, 259 U. S. 247, 66 L. Ed. 923.

Gains are not taxable, unless they fall within definition of "income." *Bourn v. McLaughlin* (D. C. Cal. 1927) 19 F.(2d) 148.

Advances of insurance premiums by broker reselling policies taken in his name held not costs of insurance but advances for others. Certificates of profit held not dividend income, but reimbursements of advances and if in excess thereof income subject to both normal and surtax. 9 R. T. A. 57.

Petitioner whose property was illegally seized by Alien Property Custodian in 1918, and returned greatly depreciated in

value in 1923 had no taxable income in 1918. 9 B. T. A. 925.

Patronage dividends due members of a co-operative business association held part of cost of goods sold and not income of the association. 13 B. T. A. 909.

The federal income tax is a personal tax imposed upon the net income of the individual. It is not a tax levied on income at its source. *Missouri Athletic Ass'n v. DeK Inv. Corporation* (1929) 20 S. W.(2d) 51, 323 Mo. 765.

"Gross income," "actual income," and "actual gain" defined. 1 B. T. A. 326.

"Income" defined. 1 B. T. A. 776.

"Gains and profits," means that which recipient has for his own use and benefit. 1 B. T. A. 776.

5. Nature of transaction

Plain unambiguous contract to sell mining property for cash and notes should not be regarded as executory until payment of price in ascertaining taxable profit in payment of notes. *Kosmerl v. Commissioner of Internal Revenue* (C. C. A. 1928) 25 F.(2d) 87.

Profits accruing to corporation under contract whereby another rendered services and marketed ore produced on mining lease, in consideration of percentage of profits, were taxable to it, being corporate profits and not profits of a joint adventure. *Bowe-Burke Mining Co. v. Willcuts* (D. C. Minn. 1930) 45 F.(2d) 394.

Contract to perform work for municipality within 90 days and providing penalty for delay beyond that period, held not a long-term contract. 1 B. T. A. 932.

Provision requiring contractor to maintain work in good repair for periods of 3 to 10 years is a collateral undertaking based upon a contingency. 1 B. T. A. 932.

Acquisition of stock held an inseparable transaction which was closed and completed in the tax year. 11 B. T. A. 1336.

6. Bookkeeping entries

If corporation's book entries, reciting a profit on property sold another corporation, sustain a verdict for income tax on the profit, a new trial will not be granted because of the court's opinion that no income was actually received; the entries being merely a matter of bookkeeping. *U. S. v. Alpha Portland Cement Co.* (D. C. Pa. 1919) 257 F. 432.

In determining taxable income, books of account are only evidential, and neither indispensable nor conclusive. In *re Sheinman* (D. C. Pa. 1926) 14 F.(2d) 323.

Facts, and not bookkeeping entries, give rise to taxable income. *Haugh & Kennan Storage & Transfer Co. v. Heiner* (D. C. Pa. 1927) 20 F.(2d) 921.

Correction of mistake on taxpayer's books by auditor at end of taxable year, though showing taxpayer's true net worth at that time, held not to authorize deduction from income taxes because mistake corrected grew out of practice extending through previous year, and no correction was made as of beginning of year. *Pottash Bros. v. Burnet* (1931) 50 F.(2d) 317, 60 App. D. C. 167, foll without op *Pottash v. Burnet* (1931) 50 F.(2d) 321, 60 App. D. C. 171 (two cases).

Taxpayer cannot change amount of income total merely by form of book entry. *Angelus Building & Investment Co. v. Commissioner of Internal Revenue* (C. C. A. 1932) 57 F.(2d) 130, cert den (1932) 52 S. Ct. 644, 286 U. S. 562, 76 L. Ed. 1295, foll *Angelus Building & Investment Co. v. Commissioner of Internal Revenue* (C. C. A. 1932) 57 F.(2d) 133.

Bookkeeping entries which do not correctly reflect income do not estop taxpayer from questioning taxation. *Corn Exchange Bank v. U. S.* (C. C. A. N. Y. 1930) 37 F.(2d) 34.

It is incorrect bookkeeping to charge to current expenses the cost of advertising to procure contracts running over a period of years, and the taxpayer may obtain a refund by amortizing the expenses over the life of the contracts. *United Profit-Sharing Corporation v. U. S.* (1928) 66 Ct. Cl. 171.

Commissions deducted by loan company from mortgage loans paid to borrowers held not taxable as income when loans were made, where company's books were kept on cash receipts and disbursements basis. *Helvering v. Martin-Stubblefield, Inc.* (C. C. A. 1934) 71 F.(2d) 944.

Bookkeeping entries are evidentiary and not conclusive. 14 B. T. A. 470, 1001, 1027.

Bookkeeping entries or adjustments do not of themselves create income even on accrual basis. 28 B. T. A. 437.

Where the actual facts show that petitioner received no dividends from a company, although book entries indicated that he did, the facts will control. 16 B. T. A. 1372.

In order that bookkeeping methods and individual entries may be taken as a basis for determining income tax they must reflect true income. 14 B. T. A. 1001.

Whether payment was intended as a gift or as additional compensation may be ascertained from resolutions authorizing payment and manner in which payment was treated in corporation's books and returns. 3 B. T. A. 1042.

Erroneous accounting cannot increase or decrease income. 4 B. T. A. 1081.

A reserve set aside in 1919 to meet losses which might occur in future years was restored to surplus in 1922. Held, that petitioner realized no taxable income in 1922 from such bookkeeping transaction. 10 B. T. A. 479.

Petitioners who had been managing mother's business for nominal salaries held to derive no income from book entries canceling advances theretofore charged to them. 11 B. T. A. 717.

Amount of adjustment on books of present value of noninterest-bearing promissory notes outstanding held not income. 12 B. T. A. 271.

Entries in books at variance with actual facts not basis for determination of income. 12 B. T. A. 1058.

7. Receipt of income

Stockholders receiving interest in partnership on dissolution of corporation held to have "received" taxable income. *Langstaff v. Lucas* (D. C. Ky. 1925) 9 F.(2d) 691, affirmed (C. C. A. 1926) 13 F.(2d) 1022, certiorari denied (1926) 47 S. Ct. 111, 273 U. S. 721, 71 L. Ed. 858.

Dividend held to be "income" of stockholder though allowed to remain with corporation. *Brooks v. Commissioner of Internal Revenue* (C. C. A. 1929) 35 F.(2d) 178.

Where oil company acted as co-owner's agent in applying to his account proceeds from sales of his share of oil and gas produced, amounts of his share applied to reimburse oil company were income to him although not received by him. *Reynolds v. McMurray* (C. C. A. Wyo. 1932) 60 F.(2d) 843, cert den (1932) 53 S. Ct. 222, 287 U. S. 664, 77 L. Ed. 593.

Proceeds of manufacturer's sales made, but not collected, during tax year, are not taxable income for that year. *Coley v. Pickering* (D. C. Ill. 1927) 21 F.(2d) 247.

"The word 'income' as used in revenue legislation has a settled legal meaning. The courts have uniformly construed it to include only the receipt of actual cash as opposed to contemplated revenue due

but unpaid, unless a contrary purpose is manifest from the language of the statute. * * * Doubtless it was the intention of Congress in legislation of this character to employ terms of sufficient comprehension to reach the actual income of the corporation by foreclosing any possible avenue of escape, but it can hardly be said that in so doing an intention prevailed to tax that which did not actually exist, except on paper, as income during the taxing period." *Maryland Casualty Co. v. U. S.* (1917) 52 Ct. Cl. 201, modified (1920) 40 S. Ct. 155, 251 U. S. 342, 64 L. Ed. 297.

Where taxpayer sold goods in bags charging customers a stated sum to secure return of bags, only so much of "return bag liability" should be charged as income as experience of business shows is ordinarily paid in the taxable year. *Alpha Portland Cement Co. v. U. S.* (1929) 67 Ct. Cl. 680.

Receipt of income is essential to taxability only when books are on cash basis. Where books are on accrual basis, income must be reported when it accrues, without regard to time of receipt. 1 B. T. A. 528.

In absence of evidence that agent had no authority, receipt by agent constitutes receipt by principal. 2 B. T. A. 598.

Where church rented parsonage directly from owner and paid rent, as it became due, to minister, who in turn paid it to owner, held, rent was received by minister as agent of church and not as increased salary. 2 B. T. A. 1317.

Information return, held erroneous and amount reported held not to have been received by taxpayer in tax year. 3 B. T. A. 1134.

Alleged agencies held not petitioner's agents, and income received by such agencies not constructively received by petitioner. 7 B. T. A. 66.

Executors held to have acted as agents of the devisees and receipt of rent by them was receipt by devisees. 7 B. T. A. 504.

Under contract of sale, executed by owners of fee and owner of life estate, initial payment made to common agent of both grantors held a payment to, and a receipt by, the owner of the life estate. 8 B. T. A. 301.

Dividends credited to majority stockholder on books of corporation held income there being no evidence that he might not have withdrawn the amount. *Brooks v. Commissioner of Internal Revenue*

nue (C. C. A. 1929) 35 F.(2d) 178, aff 12 B. T. A. 31.

Receipt of proceeds of sale by taxpayer's agent constitutes receipt by a taxpayer on a cash basis. 12 B. T. A. 403.

Full price of stock taxable when paid though part was deposited to secure performance of contract. 29 B. T. A. 953.

8. Income under former law

Pacific Ins. Co. v. Soule (Cal. 1868) 74 U. S. (7 Wall.) 433, 19 L. Ed. 95; Gray v. Darlington (Pa. 1872) 82 U. S. (15 Wall.) 63, 21 L. Ed. 45; Stockdale v. Atlantic Ins. Co. (La. 1873) 87 U. S. (20 Wall.) 323, 22 L. Ed. 348, reversing (C. C. 1872) Fed. Cas. No. 6,962; Schuylkill Nav. Co. v. Elliott (C. C. Pa. 1875) Fed. Cas. No. 12,497; Lake Shore & M. S. R. Co. v. Rose (Ohio, 1877) 95 U. S. (5 Otto) 78, 24 L. Ed. 376; Western Union R. Co. v. U. S. (Wis. 1879) 101 U. S. 543, 25 L. Ed. 1068; Knowlton v. Moore (N. Y. 1900) 20 S. Ct. 747, 752, 178 U. S. 41, 44 L. Ed. 969; Magee v. Denton (C. C. N. Y. 1863) Fed. Cas. No. 8,943; U. S. v. Schillinger (C. C. N. Y. 1876) Fed. Cas. No. 16,228; U. S. v. Frost (D. C. Ill. 1869) Fed. Cas. No. 15,172; U. S. v. Smith (D. C. Or. 1870) Fed. Cas. No. 16,341.

9. Gains or profits of corporations under former laws

See Collector of Internal Revenue v. Hubbard (Conn. 1870) 79 U. S. (12 Wall.) 1, 20 L. Ed. 272; Stockdale v. Atlantic Ins. Co. (La. 1873) 20 Wall. 323, 324, 22 L. Ed. 348; Ex parte Ives (D. C. Conn. 1865) Fed. Cas. No. 7,114; Hubbard v. Brainard (1869) 35 Conn. 563; (1899) 22 Op. Atty. Gen. 320.

II. ITEMS INCLUDED IN GROSS INCOME

21. Taxable income generally

See also cases under following subdivision of this note.

Shares received by employee at conclusion of employee's stock acquisition plan held taxable as "income" only upon amount contributed by employer, upon accrued dividends, and upon surplus accruing from withdrawals. Schaefer v. Bowers (C. C. A. N. Y. 1931) 50 F.(2d) 689, rev (D. C. 1930) 41 F.(2d) 803, cert den (1931) 52 S. Ct. 42, 284 U. S. 668, 76 L. Ed. 566.

Scattered sales of corporate stock several years later, under different conditions, held not fair test of value of corporate stock constituting taxable income as of

December, 1928. Nolting v. Tait (D. C. Md. 1933) 3 F. Supp. 686.

The fact that a corporation is controlled by a single person does not in the absence of fraud, deprive it of its right to allocation of the profits of a joint venture. Wagner v. Lucas (1930) 38 F.(2d) 391, 59 App. D. C. 219.

Gain from repayment of loan in depreciated German marks is not taxable income. Bowers v. Kerbaugh-Empire Co. (N. Y. 1926) 46 S. Ct. 449, 271 U. S. 170, 70 L. Ed. 886, affirming (D. C. N. Y. 1924) 300 F. 938.

Value to lessor of repairs and additions, made by lessee of coal mine, to miners' houses, held taxable as lessor's income for year in which they were made, in absence of agreement that they should not immediately become part of realty. Kentucky Block Coal Co. v. Lucas (D. C. Ky. 1935) 4 F.Supp. 267.

Fact that assignment of bridge construction contracts from corporation to individual and performance by latter resulted in lessening of income and excess profits taxes held immaterial in determining such taxes, since fact that certain transaction is device to avoid or lessen burden of taxation does not render transaction illegal. Iowa Bridge Co. v. Commissioner of Internal Revenue (C. C. A. 1930) 39 F.(2d) 777.

Income may be in property, and such income is taxable under same rule as income in money. Bartlett v. Commissioner of Internal Revenue (C. C. A. 1934) 71 F.(2d) 601.

"Public office" implies definite assignment of public activity, fixed by appointment, tenure, and duties, but whether state public officers are immune from federal taxation depends on the nature of their activity and the fundamental reason for denying federal authority to tax. Helvering v. Powers (1934) 55 S. Ct. 171, 79 L. Ed. —, rev (C. C. A. 1934) 68 F.(2d) 634.

A state cannot withdraw sources of revenue from federal taxing power by engaging in businesses which constitute a departure from usual governmental functions and to which, by reason of their nature, the federal taxing power would normally extend. Helvering v. Powers (1934) 55 S. Ct. 171, 79 L. Ed. —, rev (C. C. A. 1934) 68 F.(2d) 634.

Payment of dividend in stock valued above cost held not to create income. 27 B. T. A. 1200.

Where taxpayer leased its property for specified rental, to be paid directly to its stockholders as dividends, portion of rental representing dividends payable to and withheld by lessee (also a stockholder of taxpayer) constitutes income to taxpayer. 2 B. T. A. 991.

Burden was on plaintiff, suing to recover income tax paid, to allege facts showing income was not subject to tax. Lyons v. Reinecke (C. C. A. Ill. 1926) 10 F.(2d) 3.

Item determined to be part of gross income. 8 B. T. A. 399.

Amount included without any basis eliminated from gross income. 9 B. T. A. 105.

Error in including certain deposits in savings bank account in income held not shown. 12 B. T. A. 874.

Balances transferred from stockholder's accounts on the confidential ledger to general ledger is not taxable income. 8 B. T. A. 391.

Dividends received on stock promised as gift before delivery held taxable as donor's income, to donees. 28 B. T. A. 231.

Where taxpayer has erroneously written off liability, and reported an equal amount as income, the amount so reported is not taxable. 7 B. T. A. 119.

Item found to have been erroneously duplicated in income. 7 B. T. A. 331.

Amounts received as cash security for performance of lease is not taxable income. 13 B. T. A. 562.

Amount paid partner annually for maintenance of law library used by partnership constitutes taxable income. 12 B. T. A. 725.

Amounts of dues or contributions paid to voluntary unincorporated association by members constitute taxable income. 14 B. T. A. 1166.

Refund of tax overpayment held not taxable income. 29 B. T. A. 804.

Transfer though partnership held sham and cost to real vendors basis for computing gain. 29 B. T. A. 1334.

Where owner of all the stock of an apartment house company occupies an apartment rent free the fair rental value is net income. 30 B. T. A. 449.

Sale to trustees for benefit of stockholders held to result in taxable gain to

stockholders rather than corporation. 30 B. T. A. 552.

The evidence establishes that the transactions in question were purchases by taxpayer of tax-free securities as short-term investments and not loans with the securities as collateral, notwithstanding the fact that repurchase agreements were entered into at the time the securities were purchased by taxpayer. Accordingly, the coupon interest paid on such securities was properly received by taxpayer and taxpayer is exempt from tax on the same. 30 B. T. A. 556.

Payment to corporation created for sole purpose of passing title is constructively made to vendor. 29 B. T. A. 1.

22. Damages in action at law or in equity

Amount received as damages for infringement by purchaser of patent and right to damages for infringement is not taxable income. Hyatt Roller Bearing Co. v. U. S. (Ct. Cl. 1930) 43 F.(2d) 1008.

Damages for breach of contract to marry is not taxable income. 9 B. T. A. 1340.

Amount received in taxable year ended July 31, 1922, in settlement of action for damages held properly added to petitioner's gross income. 15 B. T. A. 1038.

23. Payment of loan or debt

Return of money advanced by stockholders to corporation held not income of stockholders. Weaver v. Commissioner of Internal Revenue (C. C. A. 1932) 58 F.(2d) 755.

Transaction, while in form a sale, held in reality a loan, and amount received by taxpayer was not income. 1 B. T. A. 776.

Withdrawals by stockholders held loans and not income. 12 B. T. A. 104.

Transfer of stock to creditor in satisfaction of valid and subsisting debt may result in taxable income. 28 B. T. A. 988.

Payment of mortgages with warrants of reclamation districts embracing only taxpayer's lands is not taxable income. 2 B. T. A. 1179; 6 B. T. A. 1301.

Payment on account of principal of loan is not taxable income. 3 B. T. A. 1038.

24. Cancellation of indebtedness

Amount of indebtedness canceled by creditors because of debtor's financial condition, enabling debtor to pay balance, held not taxable "income." Bur-

net v. John F. Campbell Co. (1931) 50 F.(2d) 487, 60 App. D. C. 197.

Legal fee, canceled by taxpayer in part consideration of stock purchased, held part of cost, even if bad bargain, as regards taxable profits on resale. *Duffin v. Lucas* (C. C. A. Ky. 1932) 55 F.(2d) 786, cert den (1932) 53 S. Ct. 14, 287 U. S. 611, 77 L. Ed. 531.

Cancellation of indebtedness is not taxable income. 9 B. T. A. 284; cancellation of debt. 25 B. T. A. 922.

Agreement to cancel lease by which petitioner was relieved of contingent liability to return lease deposit is not taxable income. 17 B. T. A. 196, rev on other grounds Commissioner of Internal Revenue v. Langwell Real Estate Corporation (C. C. A. 1931) 47 F.(2d) 841.

Forgiveness of indebtedness is not taxable income. *Meyer Jewelry Co.*, 3 B. T. A. 1319, followed. 18 B. T. A. 461.

Amount of indebtedness of insolvent corporation canceled by creditors is not taxable income. *Commissioner of Internal Revenue v. Simmons Gin Co.* (C. C. A. 1930) 43 F.(2d) 327; *Burnet v. John T. Campbell Co.* (C. C. A. 1931) 50 F.(2d) 487, aff 15 B. T. A. 459, which foll 3 B. T. A. 1319.

During the taxable year certain of petitioner's creditors forgave portions of debts owing by petitioner to them. Held, that no part of the amount forgiven should be included in petitioner's gross income. 25 B. T. A. 127.

Stockholders' contingent obligation to pay balance of stock's par value is not such "debt" that extinguishment by corporation's transfer of credit to capital account amounts to taxable income. *Michaels v. McLaughlin* (D. C. Cal. 1927) 20 F.(2d) 959.

Gratuitous forgiveness of subsidiary's indebtedness held contribution to subsidiary's capital and not taxable income to subsidiary. 28 B. T. A. 621.

Cancellation by corporation of president's debt to it held taxable income and not gift. *Fitch v. Hevering* (C. C. A. 1934) 70 F.(2d) 583, aff 27 B. T. A. 615.

25. Gains from compromise or discount

Finding that money received by taxpayer in compromise of suit to recover value of coal extracted by trespasser, plus damages to property, constituted taxable "income," held error, where amount of coal extracted was unknown,

and there was substantial damage to mine. *Strother v. Commissioner of Internal Revenue* (C. C. A. 1932) 55 F.(2d) 626, mod 18 B. T. A. 901, aff without reference to this point (1932) 53 S. Ct. 159, 287 U. S. 308, 77 L. Ed. 325, motion den (1933) 53 S. Ct. 789.

Entire royalties collected under settlement were returnable as client's income, notwithstanding irrevocable orders for payment of portion to attorneys under contract. *Lansill v. Burnet* (1932) 58 F.(2d) 512, 61 App. D. C. 107, aff 17 B. T. A. 413.

Amount received by bank in settlement of action for injury inflicted on bank's business, generally, by reserve bank, held under facts not taxable gain. *Farmers' & Merchants' Bank of Catlettsburg, Ky., v. Commissioner of Internal Revenue* (C. C. A. 1932) 59 F.(2d) 912, rev 20 B. T. A. 622.

Where corporation, in settlement of patent infringement suit, received shares of its own capital stock which it retired, such acquisition gave rise to taxable gain. *Commissioner of Internal Revenue v. S. A. Woods Mach. Co.* (C. C. A. 1932) 57 F.(2d) 635, cert den (1932) 53 S. Ct. 15, 287 U. S. 613, 77 L. Ed. 532.

Cash received on relinquishment of right under contract constitutes taxable income. 3 B. T. A. 475.

Amount paid in compromise and settlement of certain litigation is not taxable income. 19 B. T. A. 318.

Difference between market value of stock received in settlement of judgment and cost of procuring judgment constitutes taxable income. 1 B. T. A. 588.

Saving to taxpayer from composition agreement with creditors is not taxable income. 3 B. T. A. 1319.

Payment in settlement of action for libel is not taxable income. 6 B. T. A. 1023.

Difference between the amount accrued to cover liability for damages and the amount of subsequent settlement restored to income for the year in which the accrual was claimed. 9 B. T. A. 280.

Where corporation purchased bonds theretofore issued by it at price less than issuing price, making clear gain, and there was no shrinkage of assets, difference held gain or income for taxable year. *U. S. v. Kirby Lumber Co.* (1931)

52 S. Ct. 4, 284 U. S. 1, 76 L. Ed. 131, rev (Ct. Cl. 1930) 44 F.(2d) 885.

Corporation's purchase, at less than face value, of its unmatuired bonds previously distributed as dividend, held not to result in taxable gain. Commissioner of Internal Revenue v. Rail Joint Co. (C. C. A. 1932) 61 F.(2d) 751.

Where corporation purchased notes issued by it to seller of ships at price less than issuing price, which was not considered as reduction in price of ships, difference held taxable as income, notwithstanding assets for taxable years had shrunk. Commissioner of Internal Revenue v. Coastwise Transp. Corporation (C. C. A. 1934) 71 F.(2d) 104.

20 per cent. of part payment on a mortgage note acquired at a 20 per cent. discount constitutes taxable income. 8 B. T. A. 283.

Purchase of own bonds or bonds of another whose liabilities had been assumed at a discount is not taxable income. 4 B. T. A. 870; 6 B. T. A. 436, 1364; 7 B. T. A. 397; 12 B. T. A. 436.

Difference between contract price and amount paid in cash in lieu of mortgages under building contract is not taxable income. 7 B. T. A. 279.

Gain by stockholder for release of corporate obligation is not taxable income. 13 B. T. A. 463.

Discount allowed purchaser of interest in business held not taxable income. 26 B. T. A. 318.

A corporation realizes no taxable gain in redeeming its own bonds at less than par. 24 B. T. A. 197.

Property received in settlement of equity suit held income. 29 B. T. A. 14.

Transfer of realty in payment of debt held sale resulting in taxable income. Dallas Transfer & Terminal Warehouse Co. v. Commissioner of Internal Revenue (C. C. A. 1934) 70 F.(2d) 95, rev 27 B. T. A. 651.

Amount received under the War Minerals Relief Act, as partial reimbursement for losses sustained is not taxable income. 10 B. T. A. 1140.

Where petitioner canceled or redeemed its own bonds at less than amount it received, the difference between said amount and the amount it paid is not taxable income. 14 B. T. A. 1052, rev on other grounds Douglas County Light &

Water Co. v. Commissioner of Internal Revenue (C. C. A. 1930) 43 F.(2d) 904.

Where corporation purchases and retires its own bonds excess of the issuing price over the purchase price is taxable income. 25 B. T. A. 376.

Where petitioner issued its bonds at par and subsequently purchased some of them on the open market at less than par and retired them, the difference between the par value and purchase price at which they were retired is not taxable as income. 20 B. T. A. 586, 591.

Where taxpayer keeping books on accrual basis, acquired certain of its own bonds with interest coupons attached thereto, excess of the face value of coupons over amount paid for them is taxable as income. 24 B. T. A. 901.

26. Income from trust or annuity payment

Portions of income of trust, irrevocably assigned by beneficiary, held taxable to assignees, not assignor. Young v. Gnich-tel (D. C. N. J. 1928) 28 F.(2d) 789.

Income from stock received and paid by donee to donor under reservation of income for life held not "annuity"; hence not taxable to donee. Bettendorf v. Commissioner of Internal Revenue (C. C. A. 1931) 49 F.(2d) 173.

Income received under contracts for delivery of stock of certain institutions and payment of income therefrom to grantor for life held exempt from taxation as income from "endowment" and "annuity" contracts. Continental Illinois Bank & Trust Co. v. Blair (C. C. A. 1930) 45 F.(2d) 345.

Beneficiary, under trust requiring payment of income to her use for life, was not taxable on income turned over to trustees as part of principal. Riddle v. U. S. (Ct. Cl. 1930) 38 F.(2d) 527.

Declarations of trust executed by petitioners as to future income derived from certain sources, including partnership of which they were sole members, did not operate to relieve them of taxes on such income. Luce v. Burnet (C. C. A. 1932) 55 F.(2d) 751, aff 18 B. T. A. 923.

Money received and held as liquidating agent of corporation held not taxable to him. 27 B. T. A. 162.

Value of real estate conveyed to taxpayer in excess of intended gift held

charged with a trust, for benefit of another and not income. 2 B. T. A. 1271.

Inclusion in income of moneys received by taxpayer on behalf of others not disturbed in absence of evidence of amount so received. 5 B. T. A. 1039.

Dividends paid on stock deposited with trustee to secure performance of taxpayer's obligations under separation agreement, held income to taxpayer, though dividends were received by trustee and paid over to taxpayer's wife. 28 B. T. A. 91, aff without opinion (C. C. A. 1934) 1018.

Where in 1919, petitioner's decedent exchanged leaseholds for annuity contract, exchange constituted completed transaction, and in determining whether gain was realized in 1921 and 1922, on account of annuity payments received, capital value of contract in 1919 must be considered as amount which may be returned free of tax. Held also that gain was derived on account of each annuity payment of difference between present worth of payments in 1919, and amounts received in 1921 and 1922. 15 B. T. A. 20.

27. Contingent right to receive income

No instructions of the Treasury Department can enlarge the scope of the statute so as to impose the income tax upon unpaid charges for professional services rendered and which may never be paid. *Edwards v. Keith* (N. Y. 1916) 231 F. 110, 145 C. C. A. 298, affirming (D. C. 1915) 224 F. 585, and certiorari denied (1917) 37 S. Ct. 402, 243 U. S. 638, 61 L. Ed. 942.

Contingent right to receive money is not taxable income. *Logan v. Commissioner of Internal Revenue* (C. C. A. 1930) 42 F.(2d) 193, followed without opinion in *Bruce v. Commissioner of Internal Revenue* (C. C. A. 1930) 42 F.(2d) 197.

Corporate earnings credited to account of stockholder, and made unqualifiedly subject to his demand, were "dividends," and taxable as such, and division of corporate profits among stockholders amounts to constructive "dividend" whether so intended or not. But mere declaration of dividend without setting aside funds for its payment cannot constitute either "dividend" or "distribution." *Hadley v. Commissioner of Internal Revenue* (1929) 36 F.(2d) 543, 59 App. D. C. 139.

That, on contingency, donee of stock might be required to pay donor specified

sum rather than actual income from securities, held not to affect question to whom income was taxable; contingency not having arisen. *Bettendorf v. Commissioner of Internal Revenue* (C. C. A. 1931) 49 F.(2d) 173.

Promissory note, neither given nor received in discharge of debt which it evidences, and not readily convertible into cash, does not constitute taxable income. 18 B. T. A. 156, aff on other grounds *Merren v. Commissioner of Internal Revenue* (C. C. A. 1931) 51 F.(2d) 44.

Payments which probably never will be received should not be accrued for income tax purposes. 30 B. T. A. 764.

28. Stock purchase rights

Right to subscribe for capital stock at less than its present market value was property right taxable as gain. *Moran v. Lucas* (1929) 36 F.(2d) 546, 59 App. D. C. 142.

Internal revenue regulation (Regulation 74, par. 58) relative to taxation of stock subscription rights held valid and applied. *Todd v. Commissioner of Internal Revenue* (C. C. A. 1934) 72 F.(2d) 998.

Sale for \$116,046 of rights to subscribe to new stock at \$400 per share, so as to be able to exercise rights in respect of 290 shares, held to have resulted in taxable gain for income purposes. *Ford v. Commissioner of Internal Revenue* (C. C. A. 1933) 66 F.(2d) 1007.

That taxpayer might have realized profit had he sold rights allotted him as corporation stockholder to purchase stock in another corporation is immaterial on question of taxable profit or dividend therefrom, as taxes must be imposed on basis of what has happened. *Helvering v. Bartlett* (C. C. A. 1934) 71 F.(2d) 598.

Taxpayer realized no taxable profit or dividend from allotment of rights to purchase stock in corporation to him as stockholder in another corporation; such rights being mere options to purchase stock. *Helvering v. Bartlett* (C. C. A. 1934) 71 F.(2d) 598.

Market value of stock purchase right held not income. 27 B. T. A. 55; 27 B. T. A. 986.

Where stockholder, in corporate readjustment, received right to purchase additional stock in another corporation below market price, he received equivalent of stock dividend. 18 B. T. A. 374.

Stock delivered to employee under stock purchase contract held to be taxable compensation. 29 B. T. A. 817.

Right granted stockholders to subscribe to bonds of corporation is not taxable income. 30 B. T. A. 331.

29. Income of lessee of state or municipality

Lessee's income from sale of oil and gas produced under leases from state held subject to federal taxation. Group No. 1 Oil Corporation v. Bass (Tex. 1931) 51 S. Ct. 432, 283 U. S. 279, 75 L. Ed. 1032, aff (C. C. A. 1930) 41 F.(2d) 483, which rev (D. C. 1930) 38 F.(2d) 680.

Income derived through operations under oil and gas lease on state land are not subject to federal tax but profits realized on sale of lease of state lands for purpose of obtaining oil and gas therefrom are taxable. Marland v. U. S. (Ct. Cl. 1931) 53 F.(2d) 907.

Lessee's profits from sale of oil and gas in lands leased from state held not immune from federal income tax. Big Lake Oil Co. v. Heiner (D. C. Pa. 1932) 2 F. Supp. 41.

Income of trust, organized under state law, from oil and gas lease on city's land, held not immune from federal tax. Burnet v. A. T. Jergins Trust (1933) 53 S. Ct. 439, 288 U. S. 508, 77 L. Ed. 925, rev (C. C. A. 1932) 61 F.(2d) 92.

Where assignment of oil and gas lease from state was dated July 15, 1926, and on September 10, 1926, assignee sold his interest for part cash and balance to be paid from production of oil, title to pass under contract, as of August 11, 1926, assignee's income was not derived as lessee under lease from state so as to be exempt from income tax laws, but was profit upon sale of capital investment. Rice Oil Co. v. U. S. (D. C. Mont. 1933) 7 F. Supp. 414.

A corporation which derives income from mining operations conducted under a sublease on land which was directly leased by the State of Minnesota to two individuals, the land being a portion of the property held in trust by the State of Minnesota for its state university, is liable to income tax upon the income derived from such mining operations. 29 B. T. A. 855.

Rent received from building erected on leased city property is taxable. 29 B. T. A. 750.

30. Insurance

Amount paid insured under endowment policy constituting a profit or gain upon his premium investment rather than a death benefit or gift to beneficiary, being in no sense an indemnity for or repayment of an economic loss suffered by the insured, was within provisions of Revenue Act 1918, § 213 (40 Stat. 1065), taxing gains or profits and income derived from any source whatever. Lucas v. Alexander (Ky. 1929) 49 S. Ct. 426, 279 U. S. 573, 73 L. Ed. 851, affirming (D. C. 1927) 21 F.(2d) 68 (C. C. A. 1928) 27 F.(2d) 237.

Insurance received to cover loss by fire where loss was deducted from prior return constitutes taxable income. Cooper v. U. S. (C. C. A. Iowa, 1925) 9 F.(2d) 216.

Resulting profits on payment of endowment policy to insured constitutes taxable income. Lucas v. Alexander (C. C. A. Ky. 1928) 27 F.(2d) 237.

Money received under use-and-occupancy policy constitutes taxable income. 3 B. T. A. 283.

Amount received as indemnity for losses of crops constitutes taxable income. 12 B. T. A. 977, mod 13 B. T. A. 292.

Difference between face value of policy convertible into endowment and surrender value at completion of premium payments plus accumulated dividends at March 1, 1913, was taxable gain subject to normal and surtax rates under 1918 Act upon payment of face value. 1 B. T. A. 296.

31. Attorney's fees

Stock given in payment of attorney's fees constitutes taxable income to extent of fair market value. 1 B. T. A. 472.

Fee paid attorney by mutual mistake of fact is not taxable income. 2 B. T. A. 825.

Taxpayer is required to report as income profits received, even though he believes he may later incur expenses equal to such profits in lawyer's fees and fines necessitated by indictments growing out of enterprise from which profits arose. 15 B. T. A. 316.

Where taxpayer, entitled to receive from trustee mineral royalties, agreed to pay for legal services in perfecting right fixed percentage of amounts received and such percentage was paid directly by bank, taxpayer was nevertheless taxable thereupon. Lansill v. Burnet (C. C. A. 1932) 58 F.(2d) 512, aff 17 B. T. A. 413.

§2. Gain by enhanced value of property

The enhanced value of property of a corporation arising from its gradual increase in value through a series of years prior to the enactment of an income tax law, although afterwards distributed is not taxable income. *Lynch v. Turrish* (Minn. 1916) 236 F. 653, 149 C. C. A. 649, affirmed (1918) 38 S. Ct. 537, 247 U. S. 221, 62 L. Ed. 1087.

Mere growth or increment in value of asset not sold or disposed of is not taxable income. *U. S. v. Carter* (C. C. A. Fla. 1927) 19 F.(2d) 121; *Trust Co. of Georgia v. Rose* (D. C. Ga. 1928) 25 F.(2d) 997; 2 B. T. A. 921; 5 B. T. A. 402.

Enhanced value of goods before sale is not profit. *Tootal Broadhurst Lee Co. v. Commissioner of Internal Revenue* (C. C. A. 1929) 30 F.(2d) 239, certiorari denied (1929) 49 S. Ct. 419, 279 U. S. 861, 73 L. Ed. 1000.

Difference between estimated and actual value of deceased's interest in partnership received by executors is not taxable income. *U. S. v. Carter* (C. C. A. Fla. 1927) 19 F.(2d) 121.

Growth of trees is not taxable income. 1 B. T. A. 1061.

Lessors held to receive income from improvements voluntarily made by lessee to leased premises. 24 B. T. A. 513.

That agent collecting money loaned converts money into foreign currency for transmission to principal, and makes profit for principal thereby, does not create taxable gain. 18 B. T. A. 418.

§3. Gains from dissolution of corporation or partnership

Interest in partnership received by stockholders on dissolution of corporation constitutes taxable income. *Langstaff v. Lucas* (D. C. Ky. 1925) 9 F.(2d) 691, affirming (C. C. A. 1926) 13 F.(2d) 1022, certiorari denied (1926) 47 S. Ct. 111, 273 U. S. 721, 71 L. Ed. 858.

Amount paid by purchaser of corporate business for agreement of stockholders to refrain from entering competing business for limited period held taxable as income whether paid to corporation or its principal stockholder. *Cox v. Helvering* (1934) 71 F.(2d) 987, 63 App. D. C. 264.

Proceeds of sale of corporation's assets under contract providing that part of purchase price should be consideration for good will, represented by capital

stock purchased by vendee and assigned to corporation for retirement constitutes taxable income. 3 B. T. A. 770.

Amount recovered on liquidation by contributors to bank guaranty fund is income. 27 B. T. A. 822.

Stockholders receiving interest in partnership on dissolution of corporation held to have "received" taxable income. *Langstaff v. Lucas* (D. C. Ky. 1925) 9 F.(2d) 691, affirmed (C. C. A. 1926) 13 F.(2d) 1022, certiorari denied (1926) 47 S. Ct. 111, 273 U. S. 721, 71 L. Ed. 858.

Where incorporation of former partnership business was merely family arrangement, and transfer of former partner's interest to corporation and issuance of stock to him was merely a paper transaction, partner was not chargeable with income tax by virtue of receipt of shares of stock in newly organized corporation. *Heafey v. Allen* (D. C. Neb. 1929) 34 F.(2d) 941.

Basis of computing income of corporation taking over partnership contracts determined. 26 B. T. A. 322.

Interest in good will, acquired by taxpayer upon death of partner held to have been acquired by transfer taking effect at death, and, where taxpayer sold such interest upon retirement from partnership, only amount received in excess of value of interest at time of acquisition was taxable income. 1 B. T. A. 441.

§4. Proceeds of sale of cemetery lots

Portion of proceeds of cemetery lots paid into irrevocable trust for permanent maintenance is not taxable income. *American Cemetery Co. v. U. S.* (D. C. Kan. 1928) 28 F.(2d) 918.

Moneys received by cemetery association under contracts with lot owners providing for perpetual care or moneys held in trust for perpetual care is not taxable income. 2 B. T. A. 495; 2 B. T. A. 910.

Proportion of sale price on lots which cemetery association was obligated to set aside for perpetual care of lots held not income to association. 28 B. T. A. 882.

Moneys received by cemetery association under contracts with lot owners providing for perpetual care held, under California statutes, to constitute a trust fund, and they were not income within secs. 233(a) and 213, Act 1918 (repealed). 2 B. T. A. 495.

Whether income earned upon such funds constitutes taxable income not decided. 2 B. T. A. 405.

Proceeds of sale of cemetery lots under agreement to deposit percentage in fund to be accumulated for perpetual care constitutes taxable income. 4 B. T. A. 1069.

Amount set aside from sales by cremation association for perpetual care of niches, urns and vaults is not taxable income. Portland Cremation Ass'n v. Commissioner of Internal Revenue (C. C. A. 1329) 31 F.(2d) 843, rev 19 B. T. A. 65.

Portion of proceeds of cemetery lots passing to trustee for permanent maintenance is not taxable income. Troost Ave. Cemetery Co. v. U. S. (D. C. Mo. 1927) 21 F.(2d) 194.

35. Gains from illegal transaction

Moneys received as result of conspiracy to defraud held taxable income of person receiving them, though recoverable from latter at suit of person defrauded. U. S. v. Wampler (D. C. Md. 1934) 5 F. Supp. 796.

Money embezzled by defendant is not taxable income. Rau v. U. S. (C. C. A. N. Y. 1919) 260 F. 131.

Winnings of illegal lottery constitutes taxable income. 4 B. T. A. 1192.

Gain by bookmaker in absence of action by loser to recover constitutes taxable income. 1 B. T. A. 326.

Gains from illegal transactions constitute taxable income. 10 B. T. A. 905.

Profits must be reported even though enterprise was illegally carried on. 15 B. T. A. 316.

Wrongdoer may not urge his own wrongdoing in bar of Government's right to tax property acquired through illegal transactions. 1 B. T. A. 326.

Total gains from gambling operations may not be segregated and included in gross income when less than total losses during tax period. 1 B. T. A. 338.

Taxpayer cannot urge latent illegality of his contract to avoid tax on income derived therefrom. 30 B. T. A. 311.

36. Gains from intoxicating liquor

Gains from business in violation of prohibition law constitute taxable income. U. S. v. Sullivan (1927) 47 S. Ct. 607, 274 U. S. 259, 71 L. Ed. 1037, 51 A. L. R. 1020; 14 B. T. A. 727.

Profits from sale of liquor in violation of law held taxable. Steinberg v. U. S. (C. C. A. N. Y. 1926) 14 F.(2d) 504.

Profits from sale of whisky manufactured under permit held taxable. Roney v. Commissioner of Internal Revenue (C. C. A. 1933) 67 F.(2d) 165, rev 26 B. T. A. 1213, cert den (1934) 54 S. Ct. 872, 290 U. S. 705, 78 L. Ed. 605.

37. Embezzled or misappropriated income

Where plaintiff speculated in stock, and made a profit, but profit was embezzled by his broker, and was never received nor recovered by him, he was not taxable thereon. Black v. Bolen (D. C. Okl. 1920) 268 F. 427, writ of error dismissed (C. C. A. 1921) 277 F. 1013.

Money misapplied by attorney, receiving it from client for settlement of damage claims, held not exempt from income tax as embezzled, stolen, or obtained by false pretenses; such misapplication being breach of trust between attorney and client. U. S. v. Wampler (D. C. Md. 1934) 5 F. Supp. 796.

38. Alimony or separate maintenance

Alimony is not taxable income. Gould v. Gould (1917) 38 S. Ct. 53, 245 U. S. 151, 62 L. Ed. 211, affirming (1915) 152 N. Y. S. 1114, 168 App. Div. 900.

Payments under separation agreement are not taxable income. 3 B. T. A. 429.

Income from trust fund paid to divorced wife in lieu of alimony and for surrender of dower rights is not taxable income. 20 B. T. A. 58.

39. Assessments

Interest collected on funds of reorganization committee of railroad, funds having been realized from assessments levied against stockholders is not taxable income. Chicago, R. I. & P. Ry. Co. v. Commissioner of Internal Revenue (C. C. A. 1931) 47 F.(2d) 990.

Benefit assessment, paid by landowner, may be added to his "basis" as part of cost of property for purpose of determining taxable gain from payment of award for city's taking of portion thereof. Carrano v. Commissioner of Internal Revenue (C. C. A. 1934) 70 F.(2d) 319.

Award for city's taking of realty held not taxable gain of owner so far as canceled by benefit assessment, deducted from amount paid him. Carrano v. Commissioner of Internal Revenue (C. C. A. 1934) 70 F.(2d) 319.

Payment of benefit assessment against portion of realty, not taken for street widening, by owner paid difference between award for part taken and assessment, should be treated as immediately added to original "basis" in determining his taxable gain. *Carrano v. Commissioner of Internal Revenue* (C. C. A. 1934) 70 F. (2d) 319.

Whole award to taxpayer for city's taking of part of his realty should be considered as received by him in determining taxable gain from payment of difference, amounting to more than original "basis," between award and benefit assessment against portion not taken. *Carrano v. Commissioner of Internal Revenue* (C. C. A. 1934) 70 F.(2d) 319.

Persons paid cash without restriction for their stock in corporation received taxable income, though government officials, almost immediately thereafter, served them with notice of lien for taxes, whether taxable income was received does not depend on whether tax liens asserted by government were good or not. *Kerr v. Bowers* (D. C. N. Y. 1931) 48 F.(2d) 227.

Assessments levied by cooperative apartment house corporation on its stockholder-tenants for purpose of amortizing mortgages were contributions to capital of corporation and not taxable income. 23 B. T. A. 400.

Where income of corporation was derived from assessments against members for exclusive purpose of paying expenses of operation, any amount left over because of overassessment is not taxable as net income. 14 B. T. A. 1279.

40. — Forfeitures and unclaimed money

Payments on stock subscription contracts declared forfeited on cancellation of contracts for nonpayment of deferred installments held not taxable as income of corporation, where contracts were subject to reinstatement. *Commissioner of Internal Revenue v. Inland Finance Co.* (C. C. A. 1933) 63 F.(2d) 886.

Checks and vouchers issued by railroad, but never presented for payment, which were charged to profit and loss, held taxable as income. *Chicago, R. I. & P. Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 47 F.(2d) 990, cert den (1931) 52 S. Ct. 7, 284 U. S. 618, 76 L. Ed. 527. See, also, 13 B. T. A. 988.

Overcharges by railroad, resulting from errors in computation of passenger fares,

and credited to profit and loss are taxable income. *Chicago, R. I. & P. Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 47 F.(2d) 990, cert den (1931) 52 S. Ct. 7, 284 U. S. 618, 76 L. Ed. 527.

Taxpayer to whom income is improperly paid, but who will not be obliged to make repayment, may not be relieved from payment of tax. *Ford v. Commissioner of Internal Revenue* (C. C. A. 1931) 51 F. (2d) 206, certiorari denied (1931) 52 S. Ct. 41, 284 U. S. 696, 76 L. Ed. 504.

Wages earned and deducted from income but not collected from railroad and subsequently charged to profit and loss held taxable as income. *Charleston & W. C. Ry. Co. v. Burnet* (1931) 50 F.(2d) 342, 60 App. D. C. 192.

Where automobile owner paid for full amount of insurance to be carried on automobile unearned part of premiums returned to taxpayer engaged in financing installment purchases of automobiles held "income" and was returnable as such for income tax purposes. *Finance Sec. Co., Inc. v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 69 F.(2d) 829.

Payments forfeited to vendor under installment contract constitute taxable income. 3 B. T. A. 751.

Taxpayer insured its own goods and goods received for storage, and, upon their destruction by fire, received proceeds of policies and set up balance as reserve to meet future adjustments. Held, in absence of necessary evidence that balance of reserve was income to taxpayer in year in which proceeds of policies were received. 6 B. T. A. 1056.

Payments declared forfeited under stock subscription agreements held not income to corporation where subscribers had privilege of resubscribing and thereby receiving credit for payments declared forfeited. 23 B. T. A. 199.

Petitioner sold its capital stock on the installment plan. Upon default in meeting payments due, stock and amounts paid thereon were declared forfeited but forfeiture was void and subscriber could redeem stock at any time before foreclosure. Held that amounts forfeited were not income. 17 B. T. A. 1328.

41. — Bad debt deductions later collected

The rule that bad debts deducted and later collected are treated as income has been held not to apply to estate tax paid and later refunded in part. In such case

refund must be subtracted from the deduction and deficiency determined. *Leach v. Commissioner of Internal Revenue* (C. C. A. 1931) 50 F.(2d) 371.

Any later collection of debt allowed as deduction in previous year as worthless must be returned as income. *Putnam Nat. Bank v. Commissioner of Internal Revenue* (C. C. A. 1931) 50 F.(2d) 158.

Amounts received by taxpayer in payment of debts previously deducted from income as worthless are chargeable to income for years in which received. *Commissioner of Internal Revenue v. Liberty Bank & Trust Co.* (C. C. A. 1932) 59 F.(2d) 320.

If money recovered in recoupment of a past loss is not income, the fact that the taxpayer claimed a deduction for the loss does not make taxable the sum received in reimbursement. *Sanford & Brooks Co. v. Commissioner of Internal Revenue* (C. C. A. 1929) 35 F.(2d) 312.

Repayment of embezzled money, allowed as a loss in previous year, is income. 26 B. T. A. 1429.

Payment of debts which have been deducted as worthless in a previous year is income. 27 B. T. A. 290.

Excess of deductions for depletion over actual depletion on abandonment of lease is not taxable income. 7 B. T. A. 790, 798.

42. — Reserve for future maintenance and expenses

Contractor on cash basis, who received contract price upon completion of work, may not withhold part thereof from gross income as reserve for future maintenance. 1 B. T. A. 79.

Corporate contractor on accrual basis which receives contract price upon completion of work may not withhold part thereof from gross income, through reserves, to fulfill obligation to maintain work or to meet future expense of obtaining new contracts. 1 B. T. A. 932.

Net earnings received by operating manager of vessel held received as agent for co-owners, and co-owner's distributive share, including pro rata share of earnings retained by manager for expense of future operations, was taxable income. 5 B. T. A. 167.

Improvement bonds or cash, withheld by city to guarantee repairs and maintenance constitutes taxable income. 3 B. T. A. 438.

Difference between "reserve for unearned discount" as of December 31, 1918, and as of December 31, 1919, is not taxable income. 10 B. T. A. 642.

43. Income or capital in general

A testator cannot, by declaring in his will that accretions of selling values shall be considered principal, and not income, render such items nontaxable. *Merchants' Loan, etc., Co. v. Smietanka* (Ill. 1921) 255 U. S. 509, 41 S. Ct. 386, 65 L. Ed. 751, 15 A. L. R. 1305.

Payment of notes for mining property at maturity though capital assets held taxable profit to extent of difference between face and actual value on their date. *Kosmerl v. Commissioner of Internal Revenue* (C. C. A. 1928) 25 F.(2d) 87.

Where will gave testator's wife net income of trust in lieu of dower and other claims, widow, electing to take under will, took income as purchaser for valuable consideration, and income so received therefor constituted return of capital, and was not taxable as income. *U. S. v. Bolster* (C. C. A. Mass. 1928) 26 F.(2d) 760.

Restoration of capital assets is not taxable "income." *Kansas City Southern Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 52 F.(2d) 372.

Under testamentary trust created prior to March 1, 1913, providing for payment of income to taxpayer for life, principal to be transferred over to taxpayer's children upon his death, payments of trust income received by taxpayer held taxable in entirety as income as against contention that portion of payments represented return of capital. *Brooks v. U. S.* (Ct. Cl. 1934) 6 F. Supp. 844.

Where members of syndicate of corporation promoters nominally subscribed for stock and paid amount into company's treasury, same amount paid back to syndicate, because it owned such promotion stock, held not "income." *Duffin v. Lucas* (C. C. A. Ky. 1932) 55 F.(2d) 786, cert den (1932) 53 S. Ct. 14, 287 U. S. 611, 77 L. Ed. 531.

Amount of gain received by insured on endowment policy, attributable to and accrued during period before effective date of the Sixteenth Amendment to the Constitution and of the first law-taxing income, must, for income tax purposes, be deemed an accretion to capital and not taxable as income. *Lucas v. Alexander* (Ky. 1929) 49 S. Ct. 426, 279 U. S. 573, 73

L. Ed. 851, aff (D. C. 1927) 21 F.(2d) 68 (C. C. A. 1928) 27 F.(2d) 237.

That part of total gain accruing before effective date of Sixteenth Amendment must be considered nontaxable accretion to capital. *Worm v. Commissioner of Internal Revenue* (C. C. A. 1932) 61 F.(2d) 868, cert den (1933) 53 S. Ct. 526, 289 U. S. 729, 77 L. Ed. 1478.

Purported dividend which was in reality purchase of property by corporation is not taxable income. *Curran v. Commissioner of Internal Revenue* (C. C. A. 1931) 49 F.(2d) 129.

Evidence held insufficient to show that amount withdrawn by taxpayer as proceeds of escrow notes, executed by corporation controlled by him, for stock purchased by it, and loaned to one of issuing corporations was income of taxpayer. *Dubiske v. Commissioner of Internal Revenue* (C. C. A. 1932) 58 F.(2d) 51.

Where a corporation adopted a plan providing for the sale at par of an amount of stock equal to the outstanding stock to existing stockholders pro rata, and for the issuance to each purchaser, in addition to the stock purchased, of extra stock, and where large stockholders agreed to take and pay for shares declined by other stockholders, the extra stock issued to such a stockholder held not subject to income tax. *U. S. v. Mellon* (C. C. A. Pa. 1922) 231 F. 645.

Earnings of condemnation award transferred by court to city chamberlain in trust for remainderman held taxable "income," which is gain derived from capital, labor, or both. *Buckley v. Commissioner of Internal Revenue* (C. C. A. 1933) 66 F.(2d) 394, cert den (1933) 54 S. Ct. 208, 290 U. S. 693, 78 L. Ed. 600.

Income of corpus of estate devised in remainder to charity is not subject to tax despite power of trustee to divert part of corpus to life tenant, where there is no likelihood that he will be called on to do so. *Hartford-Connecticut Trust Co. v. Eaton* (C. C. A. Conn. 1929) 36 F.(2d) 710, affirming (D. C. 1928) 29 F.(2d) 840.

Renewal commissions to agent on insurance policies written before March 1, 1913, under contract performed prior thereto, constitute taxable income when received since, contingent right to renewal premiums cannot be impressed with characteristics of capital so long as right to receive it is contingent on nonlapsing of policy. *Workman v. Commissioner of Internal Revenue* (C. C. A. 1930) 41 F.(2d) 139.

Advances made by corporate taxpayer to subsidiary for experimental purposes are capital items for income tax purposes. *Dempster Mill Mfg. Co. v. Burnet* (1931) 46 F.(2d) 604, 60 App. D. C. 23.

Dividends declared by corporation, but not actually paid during taxable year, constituted "borrowed capital," and were properly excluded in determining invested capital. *Bulger Block Coal Co. v. U. S.* (Ct. Cl. 1931) 48 F.(2d) 675.

Stock received by contracting firm as pay for constructing building for corporation held income, not capital assets. *Gilbert v. Commissioner of Internal Revenue* (C. C. A. 1932) 56 F.(2d) 361.

Amounts received by corporation engaged in co-operative wholesale grocery business through sale of service contracts constituted taxable income. *Creasey Corporation v. Helburn* (D. C. Ky. 1932) 57 F.(2d) 204.

Where land was purchased over two years before sales thereof, but dwellings were erected thereon within two-year period, so much of profits on sales as was apportionable to enhancement in value of unimproved land was taxable as "capital gain," and so much as was attributable to houses erected thereon was taxable as ordinary "income." *Dunigan v. Burnet* (1933) 66 F.(2d) 201, 62 App. D. C. 221.

Initial payment of rentals, payable partly in advance and partly in installments, is taxable income; but, where intent is to give lessee interest in property, attending payment is return of capital. *Crile v. Commissioner of Internal Revenue* (C. C. A. 1932) 55 F.(2d) 804, cert den (1932) 53 S. Ct. 7, 287 U. S. 600, 77 L. Ed. 523.

Part of profits of charterer of vessel, paid to owner of vessel under stock purchase agreement in charter, held not income of charterer. 27 B. T. A. 1293.

Sum received by retiring partner for share of good will held a return of capital and not taxable income. 1 B. T. A. 441.

Difference between amount realized from sale of capital stock and cost of reorganization of corporation does not constitute taxable income of corporation in year in which reorganization took place; but merely a balance from a capital stock transaction. 2 B. T. A. 130.

Purchase by corporation of its own capital stock at less than price paid therefor by its stockholders held a capital

transaction from which it realized no taxable gain. 5 B. T. A. 778.

Where beneficiaries relinquished rights under will for annuities, annual payments are partly a return of capital and partly income, former being measured by present worth of each annual payment as of date of contract. 6 B. T. A. 617.

Where contract provided that owner of life estate should be reimbursed, out of first payments of purchase price, for improvements initial payment, which was less than cost of improvements, was a partial return of capital and not taxable income. 8 B. T. A. 301.

Portion of cost of war facilities acquired by petitioner which was assumed by the Government should be treated as a return of capital and not taxable income. 11 B. T. A. 921.

No part of value of life policies payable to other beneficiaries than decedent's executors or his estate, decedent having no right to change beneficiaries up to date of death, should be included in gross estate. 22 B. T. A. 1000.

Where taxpayer, keeping its books on accrual basis, acquired certain of its own bonds with interest coupons attached thereto, excess of face value of coupons over the amount paid for them held taxable as income. 24 B. T. A. 331.

Merchandise in business from 1913 till bulk sale in 1921 was "invested capital," not "income," and therefore not subject to income tax. *Kaiserman v. U. S.* (D. C. Ill. 1931) 51 F.(2d) 395.

No taxable income is derived from purchase by corporation of its outstanding bonds or notes at less than amount received upon issuance. 22 B. T. A. 373.

Sale by a corporation of its own capital stock is a capital transaction from which it realizes no taxable gain. 5 B. T. A. 520.

Premium received by corporation on sale of its bonds represents taxable income to be amortized over life of bonds. 23 B. T. A. 168.

Where petitioner acquired for \$110,000 with agreement to pay fixed rental, the unexpired terms of two leases, and during same year conveyed unexpired terms for \$50,000 and an increased annual rental, amount received on execution of instrument was taxable income, not return of capital. 21 B. T. A. 347.

Alleged capital value of law cases turned in to a partnership by the petitioner disallowed. 13 B. T. A. 1184.

Evidence insufficient to show that bank deposits represented capital assets and were not taxable as income. 18 B. T. A. 1258.

Transaction whereby retiring physician associates himself with assistant under contract providing for continuation of business under expense and profit-sharing basis for ten years, at which time assistant would own business, held sale of business, and payments made in accordance therewith to physician's widow were part of purchase price and not income to her. 14 B. T. A. 580.

Commissions on loans on bank held taxable income. *Columbia State Sav. Bank v. Commissioner of Internal Revenue* (C. C. A. 1930) 41 F.(2d) 923, aff 15 B. T. A. 219.

Return to railroad by Director General, after period of Federal control, of materials equal to those delivered to Director General at beginning of period did not give rise to taxable income, although value may have exceeded value when delivered. 16 B. T. A. 279.

Interest due to petitioner on cost of additions and betterments to its road during period of Federal control held to be a part of the compensation for the use of its road and to have accrued during the years of use rather than in the year when the amount thereof was liquidated. 16 B. T. A. 279.

Cancellation of indebtedness by agreement of creditors, under circumstances involved held not to constitute income. 20 B. T. A. 234.

Current profits held not invested capital. 25 B. T. A. 1014.

Transaction held income producing sale of land within year from acquisition. 27 B. T. A. 889.

Payments on stock subscriptions forfeited for failure to make remaining payments are capital contributions and not income to corporation. 3 B. T. A. 1178.

Amounts received as consideration for mineral deeds held ordinary income and not capital gain. 30 B. T. A. 597.

A corporation contracted to advance cash and securities to a partnership and in return therefor was to receive all the income of the partnership except amounts paid to partners as salaries and a percentage of profits to be paid to the es-

tate of a deceased partner in a prior partnership. Held, that the amounts received by the corporation under the contract are income to it, there being no evidence that such amounts were return of capital or otherwise nontaxable; held, further, that the sums paid by the partnership to the estate of the deceased partner are not income to the corporation. 30 B. T. A. 988.

A dividend declared by petitioner corporation, payable in stock of another corporation and so paid, did not give rise to taxable gain. 29 B. T. A. 934.

Where corporation receives all assets of subsidiary and assumes its debts, difference between value of assets and amount of debts determines gain. 29 B. T. A. 661.

44. Compensation for services—In general

Under Income Tax Act 1913, § 2B (repealed) providing that net income should include income from salaries, wages, or compensation for personal services, "salaries" indicated a periodical payment as compensation for regular employment, while "wages" applied to manual labor. Merriam v. U. S. (C. C. A. N. Y. 1922) 282 F. 851, affirmed (1923) 44 S. Ct. 69, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

Congress intended to cover payments under contracts of employment, expressed or implied, and to reach all forms of payment for services rendered; but whatever was sought to be taxed as compensation for services must be the consideration for work performed, or to be performed, and must be derived from or flowing from labor. Merriam v. U. S. (C. C. A. N. Y. 1922) 282 F. 851, affirmed (1923) 44 S. Ct. 69, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

Where a terminal company is organized by three railroad companies to acquire and jointly operate a bridge, the capital stock being owned by them in equal proportions, and the plan of organization reciting that the company is not to be operated for profit, but for the equal benefit of the railroad companies, payments by the railroad companies to the terminal company for their respective shares of the operating expense, constitute income of the terminal company subject to tax. Hamilton v. Kentucky, etc., R. Co. (C. C. A. Ky. 1923) 289 F. 20.

Par value of Liberty Loan bonds, received by taxpayer in payment for serv-

ices rendered corporation, held taxable as income. Hiltner v. Lederer (C. C. A. Pa. 1933) 63 F.(2d) 877, 878, aff (D. C. 1931) 55 F.(2d) 343.

Stock gained by trust company as result of organizing corporation and selling stock held not taxable as "compensation for personal services." Trust Co. of Georgia v. Rose (D. C. Ga. 1928) 25 F.(2d) 997, aff (C. C. A. 1928) 28 F.(2d) 767.

Amount of receipts of business paid taxpayer's son pursuant to contract employing son in business, though not deductible as salary, held part of taxable income. Hecht v. U. S. (Ct. Cl. 1932) 54 F.(2d) 968, cert den (1932) 52 S. Ct. 643, 286 U. S. 560, 76 L. Ed. 1293.

Share of profits deposited to account of taxpayer by his father for whom he worked to vest on his reaching stated age, held income. Cohen v. Commissioner of Internal Revenue (C. C. A. 1929) 31 F.(2d) 874.

Annual payment made to insurance agent, pursuant to agreement made before March 1, 1913, for surrender of right to commissions on renewal premiums except as to discount is not taxable income. Platt v. Bowers (D. C. N. Y. 1926) 13 F. (2d) 951.

Par value of Liberty Loan bonds, received by taxpayer in payment for services rendered corporation, held taxable as income. Hiltner v. Lederer (C. C. A. Pa. 1933) 63 F.(2d) 877, 878, aff (D. C. 1931) 55 F.(2d) 343.

Quarters furnished to army officers in kind, and commutation of quarters paid to them where quarters cannot be furnished in kind, are allowances, and not compensation, within laws imposing income tax. Jones v. U. S. (1925) 60 Ct. Cl. 552.

Value of interest of attorney as member of partnership whose assets consisted solely of oil leases held "earned income" at time of formation of partnership, where attorney had merely contributed his services, but increase in value of interest was "gain and profit" for purpose of determining income tax. Glasser v. Alexander (D. C. Okl. 1934) 8 F.Supp. 197.

Option to purchase stock at nominal price held part of salary. 26 B. T. A. 147.

Amounts received by attorney from two other attorneys on entering into law partnership as compensation for excess value of good will and unearned fees to be put

into the firm, held taxable income. 28 B. T. A. 698.

\$4,000 determined to be reasonable allowance for the salary of an officer and director. 25 B. T. A. 419.

Amount recovered from decedent's estate on promise to pay for services in caring for decedent, held taxable income. 16 B. T. A. 972.

Certain executor's fees received by the petitioner held not to be income for the year 1920. 16 B. T. A. 250.

Where corporation surrendered notes to petitioner in payment of services rendered and shares of stock, petitioner had income, or profit in amount of difference between cost of stock and face value of notes. 21 B. T. A. 41.

Portion of salary of officer repaid to corporation held neither income to officer nor capital contribution. 3 B. T. A. 761.

Salaries received by partners from corporation and loaned to partnership were taxable to partners as individual. 4 B. T. A. 916.

Corporate officer is taxable on entire amount of compensation received from corporation, notwithstanding part thereof was disallowed as deduction to corporation on ground of unreasonableness. 6 B. T. A. 579.

Exclusion of commissions returned in subsequent year denied. 7 B. T. A. 864.

Amount paid for services to be performed in the future is income when received. 7 B. T. A. 1238.

Amounts received by officers and employees from a fund created by former stockholders of a corporation held taxable income. Jones v. Commissioner of Internal Revenue (C. C. A. 1929) 31 F.(2d) 755, rev 10 B. T. A. 202.

Where officer of corporation during taxable year returns part of a salary received because business does not warrant regular salary, amount returned should not be included in gross income. 11 B. T. A. 641.

Respondent sustained in computing tax on the salary actually received in tax year. 12 B. T. A. 675.

See, also, 12 B. T. A. 841.

Gift by taxpayer to wife and children of part of interest under contract for services rendered did not relieve taxpayer from liability for tax upon amount received under contract. 22 B. T. A. 707.

Share of sugar received as compensation for milling same held income to extent of value. Commissioner of Internal Revenue v. San Carlos Milling Co. (C. C. A. 1933) 63 F.(2d) 153, aff 24 B. T. A. 1132.

Payment to employee in recognition of services held taxable. 27 B. T. A. 895.

Amounts due decedent for salary and bonus, covering periods prior to his death, held to be corpus and not income to his estate when collected by the administrator. 14 B. T. A. 931.

Finding made that item reported in return as salary was not received as such but constituted profit on sale which was not reported, and such profit, having been included in return, amount reported as salary should be eliminated. 6 E. T. A. 557.

Where taxpayer receives for services a royalty interest in unproven oil lands having only speculative value and no market value, no taxable income is realized. 2 B. T. A. 1012.

Pay from school district for transporting school children is not taxable. 29 B. T. A. 1106.

Salaries of Port Commissioners held not taxable. 29 B. T. A. 1113.

45. — Commissions

Under Act Oct. 3, 1913, c. 16, § II, div. B (repealed), a life insurance agent, whose contract entitled him to commissions of a specified percentage of the first premium of each policy and of a different percentage on subsequent renewal premiums when the same should be paid, was liable to pay the income tax on commissions on renewals of policies issued before the act was adopted, which were not paid until thereafter. Edwards v. Keith (N. Y. 1916) 231 N. 110, 145 C. C. A. 208, L. R. A. 1915A, 498, affirming (D. C. 1915) 224 F. 585, and certiorari denied (1917) 37 S. Ct. 402, 243 U. S. 638, 61 L. Ed. 942. To the same effect, see Woods v. Lewellyn (C. C. A. Pa. 1918) 252 F. 106; Platt v. Bowers (D. C. N. Y. 1926) 13 F.(2d) 551.

Evidence held to sustain finding of Board of Tax Appeals that stock was acquired by taxpayer as commissions, requiring inclusion in determining income tax. F. G., Inc., v. Commissioner of Internal Revenue (C. C. A. 1931) 47 F.(2d) 541.

Sum of commissions paid by shipping agent to self for moneys collected for prin-

principal held income for fiscal year in which received, although accounts were not allowed by principal until after close of fiscal year. 14 B. T. A. 671.

Contract between landowner and taxpayer for subdivision and sale of land held a contract of agency; hence, only commissions received constituted taxable income. 2 B. T. A. 1169.

Commissions paid taxpayer by other concerns and delivered to employer pursuant to contract were not taxable income of taxpayer. 3 B. T. A. 165.

Commissions withdrawn by corporate officer were not income when repaid to corporation subsequent to tax year. 3 B. T. A. 282.

Commissions on shares sold by taxpayer to subscribers who were in arrears with installment payments included in taxpayer's gross income, in absence of evidence of intent to cancel subscription contract. 5 B. T. A. 442.

46. — Stock received as compensation

Statute including in gross income all compensation for personal services in whatever form paid held applicable to corporation officer's salary paid in stock. Old Colony Trust Co. v. Commissioner of Internal Revenue (C. C. A. 1932) 59 F.(2d) 168.

Where fair market value of property received in compensation for services is not readily realizable, Board of Tax Appeals may consider stipulated price of services or fair market value of stock in which paid by corporation. Old Colony Trust Co. v. Commissioner of Internal Revenue (C. C. A. 1932) 59 F.(2d) 168.

Corporate stock received by way of salary, if it has value, constitutes "income," taxable in year received. Crowell v. Commissioner of Internal Revenue (C. C. A. 1932) 62 F.(2d) 51.

"Market value" of corporate stock received as compensation for personal services, as basis for determining taxable income, need not be determined by actual sales. Crowell v. Commissioner of Internal Revenue (C. C. A. 1932) 62 F.(2d) 51.

Intrinsic value may determine market value of corporate stock received as compensation for personal services, as basis for determining taxable income, where no doubt exists of market. Crowell v. Commissioner of Internal Revenue (C. C. A. 1932) 62 F.(2d) 51.

Measure of compensation received in corporate stock and taxable as income is market value, whether readily realizable or not. Crowell v. Commissioner of Internal Revenue (C. C. A. 1932) 62 F.(2d) 51.

Corporate stock received by architect for services rendered, notwithstanding stock had no fair market value, held taxable income, if stock had fair actual value. Nolting v. Tait (D. C. Md. 1933) 3 F. Supp. 686.

Income of attorneys' copartnership held to include fair market value of corporation stock, received as compensation for legal services, as of date of its receipt, not last day of taxable year, whether distributed or not. Bartlett v. Commissioner of Internal Revenue (C. C. A. 1934) 71 F.(2d) 601.

Evidence held insufficient to establish that certain stock received by petitioner as compensation for services rendered had no market value when received. Commissioner's valuation affirmed. Lincoln Bank & Trust Co. v. Commissioner of Internal Revenue (C. C. A. 1931) 51 F.(2d) 78, mod 14 B. T. A. 393.

Acceptance of stock in settlement of salary and advances does not result in taxable income unless shares have been converted into cash or have a realizable market value. 1 B. T. A. 760; 2 B. T. A. 552.

Stock issued to taxpayer but held in escrow pending completion of 3 years of service by taxpayer with corporation, held compensation for services and cash value held income. 3 B. T. A. 475.

Where ownership of stock remained in stockholders until taxpayer had completed 3 years of service, delivery of certificates held not such modification of contract as to constitute value of shares income to taxpayer at date of receipt. 3 B. T. A. 475.

Value of stock received by taxpayer for services held income; restriction on sale held not to have affected readily realizable market value. 4 B. T. A. 499.

That there were no sales of stock in year of receipt for services does not prove that stock had no market value. 4 B. T. A. 509, 514.

Stock held not received in an exchange of property but earned under a contract and income to extent of market value. 8 B. T. A. 1126

Corporate stock received by partnership as compensation for services should be included in partnership income at fair market value when received. *Bartlett v. Commissioner of Internal Revenue* (C. C. A. 1934) 71 F.(2d) 601, aff 28 B. T. A. 285.

47. — Bonus or additional compensation

Additional compensation to the president of a corporation, allowed as a credit on the corporation's books in December, 1913, against overdrafts by the president, was taxable as income of the year 1913, under Oct 3, 1913, where, though the compensation was for previous years and the overdrafts were made in reliance on a previous promise for additional compensation, the amount of the compensation was undetermined, and it was not certain that it would be paid until it was actually so credited. *Holbrook v. Moore* (D. C. Mo. 1921) 293 F. 264.

Bonus paid to president of railroad company by holding corporation which owned former's capital stock, upon termination of employment, held "compensation for personal service" and not "gift," and therefore taxable income. *Schumacher v. U. S.* (Ct. Cl. 1932) 55 F.(2d) 1007.

That holding corporation's payment of bonus to employees of subsidiary was not deducted in holding corporation's income tax held not to preclude taxing amount thereof to recipient as compensation. *Bass v. Hawley* (C. C. A. Tex. 1933) 62 F.(2d) 721.

Additional payments by employer to reimburse employees for income tax held taxable income. 26 B. T. A. 889.

Where, in 1921, after completion of work on ship construction contracts, sale of plant and ascertainment of actual profit earned, company credited employee's account with his share of net profits, such crediting entry converted advances made in 1920 into payments of additional compensation which were taxable. 15 B. T. A. 1294.

Premiums paid by employer for insurance on the life of an employee of which the beneficiary is the employee's wife are compensation of employee for services and part of his gross income. 18 B. T. A. 1221.

Additional compensation received for services rendered to corporation in form of shares of stock of corporation held to constitute taxable income to amount of fair market value at date of receipt. 21 B. T. A. 849.

Bonus paid cashier of a bank, upon his retirement held additional compensation. 10 B. T. A. 1156.

An amount equal to one year's pay allowed an officer of the United States Army honorably discharged, or eliminated, under section 978 of Title 10, Army, was in the nature of a bonus or additional compensation and not simply a gratuity or gift and was taxable income. 10 B. T. A. 1192.

Where president and general manager of hotel corporation was supplied with rooms and meals for himself and wife without charge, reasonable value thereof properly included in income. 11 B. T. A. 855.

Shares of stock of a corporation received as additional compensation for services rendered to corporation constitute taxable income to recipient to extent of fair market value at time of receipt. *Old Colony Trust Co. v. Commissioner of Internal Revenue* (C. C. A. 1932) 59 F.(2d) 168, aff 22 B. T. A. 1062.

Life insurance premiums paid by corporation on policies covering president, in which corporation was not beneficiary, held taxable income to president. 18 B. T. A. 381.

Rental value of residence furnished by corporation to its president is taxable to him. 30 B. T. A. 451.

48. — Compensation or gift

Whether payment of money to employee constitutes taxable compensation for services, or nontaxable gift, depends upon intention of parties. *Fisher v. Commissioner of Internal Revenue* (C. C. A. 1932) 59 F.(2d) 192.

Money paid to veteran employee upon voluntary resignation held, under evidence, not nontaxable gift, but taxable as additional compensation for services. *Fisher v. Commissioner of Internal Revenue* (C. C. A. 1932) 59 F.(2d) 192.

Fact that employer was under no legal duty to pay money to employee is not conclusive on question whether payment constituted nontaxable gift. *Fisher v. Commissioner of Internal Revenue* (C. C. A. 1932) 59 F.(2d) 192.

Whether payment of money constitutes taxable "compensation for personal service," or nontaxable "gift," depends upon intention of parties and surrounding facts and circumstances. *Schumacher v. U. S.* (Ct. Cl. 1932) 55 F.(2d) 1007.

Part of proceeds of sale of stock in corporations donated to administrative staff without consideration held not taxable as income. *Jones v. Commissioner of Internal Revenue* (C. C. A. 1929) 31 F. (2d) 755.

Payment by seller of coal properties of substantial sum to local manager of purchaser, who represented purchaser in transaction, held "gift," and not taxable compensation. *Lunsford v. Commissioner of Internal Revenue* (C. C. A. 1933) 62 F. (2d) 740.

That holding corporation paid bonus to general auditor of subsidiary railroad held not to establish that payment was "gift" rather than "compensation for personal service." *Bass v. Hawley* (C. C. A. Tex. 1933) 62 F. (2d) 721.

"Bonus" paid general auditor of railroad by holding corporation held "compensation for personal service," not "gift," and therefore taxable income. *Bass v. Hawley* (C. C. A. Tex. 1933) 62 F. (2d) 721.

Evidence held insufficient to establish that sum received by petitioner upon the termination of his employment was a gift and, therefore, not taxable income. 16 B. T. A. 907.

Certain stock received by petitioner in 1920 held not to have been issued in payment for salary and should not be included in gross income for that year. 15 B. T. A. 1372.

Payments gratuitously made, though on account of some past act or service, do not constitute taxable income. 14 B. T. A. 303, aff on other grounds *Lincoln Bank & Trust Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 51 F. (2d) 78, mod

Compensation for services rendered in negotiating a sale of merchandise, which sale was not consummated held part of gross income of business and not a mere gratuity. 11 B. T. A. 789.

49. — Compensation or dividends

Evidence sustained finding that percentage of dividends paid director on corporate stock held in trust was taxable as salary, not as dividends. *Lihme v. Reinecke* (C. C. A. Ill. 1932) 59 F. (2d) 633.

Where Commissioner determines that salaries paid are excessive and orders excess to be treated as distribution of earnings, full amount is taxable as salary as to recipient. *Livingston v. U. S.* (1929) 67 Ct. Cl. 536.

Personal withdrawals by sole proprietor included in gross profits are not chargeable to him again as income from salary. 4 B. T. A. 427.

50. — Compensation or loan

Payments to petitioner made in 1920 held loans or advances and not gratuities or payments of additional compensation under the terms of a contract of employment. 15 B. T. A. 1294.

Advances drawn by petitioner in excess of salary and commissions earned during the taxable year and repaid in subsequent years do not constitute income. 14 B. T. A. 703.

Determination that withdrawals from corporation by its president were not loans but constituted taxable income to him, approved. 20 B. T. A. 264.

51. — Compensation not paid

Salary credited on books of employer and immediately available but not drawn held returnable as income though not drawn. *Schoenheit v. Lucas* (C. C. A. 1930) 44 F. (2d) 476.

Full salary of employee held taxable though part was not drawn but was donated to employer as reimbursement for loss on contract assigned to employee as payment for stock. *Burns v. Commissioner of Internal Revenue* (C. C. A. Fla. 1929) 31 F. (2d) 399, certiorari denied (1929) 50 S. Ct. 25, 280 U. S. 564, 74 L. Ed. 618.

Where employee bound himself to invest two-thirds of his share of corporation's profit in its capital stock, which during term of his employment was to be held in trust, and marketability of his stock interest was restricted by terms of trust, such share of corporation's profits must be treated, for income tax purposes, as employee's income for year in which purchase was made. *Rodriguez v. Edwards* (C. C. A. N. Y. 1930) 40 F. (2d) 408, affirming (D. C. 1929) 33 F. (2d) 1003.

Salary of solvent corporation officer is income though not drawn. 25 B. T. A. 1103.

Salary credited on books of a corporation but not drawn by petitioners' decedent, held to be properly included in taxable net income of decedent. 14 B. T. A. 33.

Amount credited on one corporation's books and notes given by another corporation for salary of president of both did

not constitute taxable income in excess of aggregate amount actually received by president in cash in view of financial condition of corporations. 18 B. T. A. 650.

Salary credited on books of corporation is not taxable unless it is available for use of employee. 1 B. T. A. 700. To substantially the same effect, see 2 B. T. A. 66, 549, 552; 4 B. T. A. 49; 9 B. T. A. 1404. And salaries credited on books and not drawn during tax year have been held not constructively received. 2 B. T. A. 635, 979, 1221. To substantially same effect, see 2 B. T. A. 255, 549.

Salary credited by but not received by taxpayer, as officer of corporation which was able to pay, the receipt being entirely within his own control, is constructively received. 3 B. T. A. 231, 237.

Salary credited on corporate books but not drawn held income in absence of proof that officer was on cash basis. 3 B. T. A. 683.

Where net income of individual computed on percentage of gross sales, arbitrary addition of sum, as salary, which was not paid, held erroneous. 5 B. T. A. 1242.

Right to compensation for years prior to March 1, 1913, to be paid when financial condition permitted, was contingent and was income to officers on cash basis in year of receipt. 6 B. T. A. 1048.

Amount included in income as salary held not received and not taxable. 9 B. T. A. 1116.

52. — Amounts subsequently returned

Where earnings of corporation were distributed to stockholders in proportion to their stock holdings under agreement, subsequently reduced to writing, that they would be refunded if additional war and excess profits taxes were assessed, and government refused to allow them to be deducted as salaries and assessed such additional taxes, necessitating refund by stockholder, amount refunded was not "income" to the stockholder, and she was entitled to refund of tax paid thereon. *Eakins v. U. S.* (D. C. N. Y. 1930) 36 F. (2d) 961.

53. — Expense items

Money received by taxpayer from steel company for disposing of slag held properly included as part of taxpayer's "gross income," notwithstanding such money was to be expended in research to find market for materials. *Standard Slag Co. v. Com-*

missioner of Internal Revenue (1933) 63 F. (2d) 820, 62 App. D. C. 8.

Amounts paid taxpayer in partial reimbursement for traveling expenses held not compensation to be included in gross income. 5 B. T. A. 996.

Amounts paid employee held not compensation but reimbursements for expenditures. 5 B. T. A. 1039.

Notwithstanding fact that items of salary and interest were charged as expense items and taken as expense deductions, without his knowledge, in estate-tax returns, petitioner is not liable for income tax on such items when it is clearly shown that he did not in fact receive that money. 22 B. T. A. 535.

Expenses of a corporation for operation and maintenance of a yacht owned by the corporation claimed as a deduction by the corporation and disallowed by the respondent were not properly added to the personal income of the president of the corporation. 20 B. T. A. 919.

Personal withdrawals charged as expenses in computing business income should be included in individual return as income from salaries. 2 B. T. A. 1087.

54. Gains on sales or exchanges—In general

The gain or profit from sales of corporate stock or other personal property which are taxable as income are not limited to those sales by one engaged in buying and selling as a business but include also the gains from an isolated sale by an individual owner. *Merchants' Loan & Trust Co. v. Smietanka* (Ill. 1921) 41 S. Ct. 588, 255 U. S. 509, 65 L. Ed. 751, 15 A. L. R. 1305. Seemingly to the contrary, see *Brewster v. Walsh* (D. C. Conn. 1920) 268 F. 207, reversed in part and affirmed in part (1923) 41 S. Ct. 392, 255 U. S. 536, 65 L. Ed. 782.

Gain or profit resulting from sale of one's stock in corporation, along with holdings of other stockholders, is taxable as income. *Noel v. Parrott* (C. C. A. Va. 1926) 15 F. (2d) 669, certiorari denied (1927) 47 S. Ct. 457, 273 U. S. 754, 71 L. Ed. 875.

In *U. S. v. Cedarburg Milk Co.* (D. C. Wis. 1922) 288 F. 996, it was held that where corporation, on a sale or other disposition of the property, made a gain, the taxability of such gain was not to be avoided on the theory that its property became merged with the property of an-

other corporation, and it was immaterial that part of the consideration was in corporate stock of the vendee, and that under state law no right existed to stipulate for part of the consideration in corporate stock.

Gain from conveyance of property for stock of family corporation, which had no market value, held not taxable "income." *Bourn v. McLaughlin* (D. C. Cal. 1927) 20 F.(2d) 148.

Profit derived by taxpayers from sale of land to city for public use held not exempt from federal income tax. *Fullilove v. U. S.* (C. C. A. La. 1934) 71 F.(2d) 852.

Proceeds from sale of stock of affiliated company in excess of price paid for assets of such company held not "taxable gain." *United Drug Co. v. Nichols* (D. C. Mass. 1927) 21 F.(2d) 160. To the same effect, see 5 B. T. A. 520, 529, 1292.

The plaintiff acquired an interest in the assets of a copartnership for an agreed sum, sold that interest to a corporation for shares of stock, and sold said shares for more than amount paid for interest in the copartnership. The excess held to be a gain and taxable as income. *Beets v. U. S.* (1926) 62 Ct. Cl. 1, certiorari denied (1927) 47 S. Ct. 475, 273 U. S. 762, 71 L. Ed. 879.

Income from sale of stock dividend is profit derived from sale of stock within income-tax law. *Chapman v. U. S.* (1927) 63 Ct. Cl. 106, certiorari denied (1927) 48 S. Ct. 18, 275 U. S. 524, 72 L. Ed. 406.

It is matter of common knowledge that under federal income tax act an income tax was levied on gains derived from purchases and sales of intangible personality, such as corporate stock, by one not engaged in such dealings as business, and that right so to do was asserted by revenue officers of United States. *Trefry v. Putnam* (1917) 116 N. E. 904, 227 Mass. 522, L. R. A. 1917F, 806.

Income from sale of stock to corporation in liquidation held taxable under section 900 et seq. of this title, not under this section. 20 B. T. A. 866, aff without reference to this point *Phelps v. Commissioner of Internal Revenue* (C. C. A. 1931) 54 F.(2d) 289, cert den (1932) 52 S. Ct. 458, 285 U. S. 558, 76 L. Ed. 946.

Owners agreement for sale of half of amusement corporation's stock held sale, resulting in taxable "gain," notwithstanding collateral agreement and pledge of stock to secure price. *Clemmons v.*

Commissioner of Internal Revenue (C. C. A. 1932) 54 F.(2d) 209.

Transaction pursuant to written contract involving transfer of common stock of corporation to trustee, where by stockholders received cash and preferred stock in new corporation, held to disclose taxable profits. *Wright v. Commissioner of Internal Revenue* (C. C. A. 1931) 50 F.(2d) 727, affirming 19 B. T. A. 541, certiorari denied (1931) 52 S. Ct. 32, 284 U. S. 652, 76 L. Ed. 553.

Letter authorizing bank to sell writer's securities, purchase Treasury certificates, and repurchase same securities with proceeds of sale of certificates, contemplated sale of securities within income tax law. *Stimpson v. Commissioner of Internal Revenue* (C. C. A. 1932) 55 F.(2d) 815, cert den (1932) 52 S. Ct. 579, 286 U. S. 555, 76 L. Ed. 1289.

Husband and wife who acquired farm as partners, and thereafter organized corporation controlled by themselves to which they sold farm at loss, could not deduct loss from income. *Labrot v. Burnet* (1932) 57 F.(2d) 413, 61 App. D. C. 47.

Transaction whereby employees received corporation's stock under contract allowing credits on purchase price equivalent to dividends held not sale, as regards tax. *Alger-Sullivan Lumber Co. v. Commissioner of Internal Revenue* (C. C. A. 1932) 57 F.(2d) 3.

Value at time of testator's death is basis for ascertainment of gain or loss on sale by devisee of real estate in determining tax. *McCann v. U. S.* (Ct. Cl. 1931) 48 F.(2d) 446.

Profits from payment of installment notes for price of mining property at maturity constitute taxable income. *Kosmerl v. Commissioner of Internal Revenue* (C. C. A. 1928) 25 F.(2d) 87.

Profits from sale of corporation stock for more than its cost to sellers are taxable. *Kerr v. Bowers* (D. C. N. Y. 1931) 48 F.(2d) 227.

Income received by corporation from shares of new company exceeding cost of property exchanged held not exempt under statute exempting security holders receiving substituted securities on reorganization. *Insurance & Title Guarantee Co. v. Commissioner of Internal Revenue* (C. C. A. 1929) 36 F.(2d) 842, certiorari denied (1930) 50 S. Ct. 352, 281 U. S. 748, 74 L. Ed. 1160.

Interest in contract for purchase of land which was sold at profit by administratrix in New Jersey was real estate, so that profit should not be included in determining administratrix's income tax liability, in view of ruling by Court of Chancery of New Jersey. *Radin v. Commissioner of Internal Revenue* (C. C. A. 1929) 33 F.(2d) 39.

Taxpayer, selling stock in consideration of annual payments contingent on iron ore received, held entitled to return of capital investment before paying income tax based on conjectural market value of annual payments. *Burnet v. Logan* (1931) 51 S. Ct. 550, 283 U. S. 404, 75 L. Ed. 1143, aff. (C. C. A. 1930) 42 F.(2d) 193; *Burnet v. Bruce* (1931) 51 S. Ct. 550, 283 U. S. 404, 75 L. Ed. 1143, aff. (C. C. A. 1930) 42 F.(2d) 197.

Evidence held insufficient to support finding that transaction under which corporation sold stock to shareholders involved tax-producing dividends. *Taplin v. Commissioner of Internal Revenue* (C. C. A. 1930) 41 F.(2d) 454.

Principal stockholder's purchase of realty from corporation for less than its actual value did not result in taxable gain or profit growing out of his interest in property; such interest not being capital interest. *Commissioner of Internal Revenue v. Van Vorst* (C. C. A. 1932) 50 F.(2d) 677.

Stockholder's mere interest in corporation's assets does not make taxable income out of excess value of property purchased from corporation by him for less than its actual value. *Commissioner of Internal Revenue v. Van Vorst* (C. C. A. 1932) 59 F.(2d) 677.

Sum which vendor of newspaper business paid to purchaser to cover unearned part of prepaid subscriptions held not part of purchaser's taxable income. *Evensville Courier v. Commissioner of Internal Revenue* (C. C. A. 1932) 62 F.(2d) 232, rev. 21 B. T. A. 862.

Purported written lease of motor bus line with option to purchase held conditional sale for purpose of determining profits taxable as income. *Watson v. Commissioner of Internal Revenue* (C. C. A. 1932) 62 F.(2d) 35.

Evidence held to show that taxpayer sold property involved directly to corporation to which lease could be assigned so as to be subject to tax on profits from sale, and not that he transferred it to another corporation which in turn sold it to

former corporation. *Pettifils v. Commissioner of Internal Revenue* (C. C. A. 1933) 64 F.(2d) 309.

Facts, held to establish that bank stockholder received for his stock new stock in trust company "in connection with merger" of bank with trust company, and that transaction was not "sale" for income tax purposes, notwithstanding transaction was made to comply with local statute prohibiting bank's issuing new stock except for cash. *American Security & Trust Co. v. Tait* (D. C. Md. 1933) 5 F. Supp. 337.

Profits arising from sale of realty to city, which realty was subsequently donated to government for air port, held subject to income taxes notwithstanding price was agreed on through arbitration because of imminence of expropriation proceedings. *Fullilove v. U. S.* (D. C. La. 1934) 7 F. Supp. 468.

Method of computing profit made on sale of margin stock determined. 22 B. T. A. 149.

Sales of stock shall be charged against earliest purchases of such stock where identity of lots cannot be determined. 22 B. T. A. 910.

When notes are received as part payment for property sold and vendor at once disposes of such notes at discount, only the proceeds thereof should be included in computation of gross income. 22 B. T. A. 1254.

Commissioner did not err in including evidences of indebtedness at face value in computing gain from sales of real estate. 24 B. T. A. 98.

Upon transfer of property held in joint venture, with distribution of resulting proceeds taxable transaction occurs upon which gain or loss should be computed, even though joint adventurers remain liable on their purchase money mortgage. 23 B. T. A. 1147.

Gain realized on sale of property, part of which was to be held in trust for decedent's widow until her death or remarriage, and part until child attained his majority, is not distributive income and is taxable to fiduciary and not to widow and minor child. 23 B. T. A. 1005.

Upon evidence held that petitioner issued its entire stock to investment trust as part payment for certain real property, that there was no resulting trust in favor of investment trust, and that upon

subsequent sale of property, profit was taxable to petitioner. 23 B. T. A. 707.

Sale held to have been made by petitioner personally and not as agent of a corporation to which he had pretended to transfer business, and held to represent gain to him. 24 B. T. A. 1090.

Petitioner directing that notes and mortgage covering balance of purchase price above cash for farm be made payable and delivered to daughter, held nevertheless chargeable with total profits from sale. 15 B. T. A. 638, petition dismissed Rogers v. Commissioner of Internal Revenue (C. C. A. 1930) 41 F.(2d) 1012.

For purpose of determining taxable gain or loss, cost to widow selling property, acquired as tenants by entirety, was original purchase price plus expenditures for improvements by decedent. 16 B. T. A. 477.

Returnable containers held to pass by sale so that gross payment is part of seller's income. 25 B. T. A. 870.

Where taxpayer in selling cement charged customers for bags at fixed price agreeing to redeem them at same price, there was sale of bags. La Salle Cement Co. v. Commissioner of Internal Revenue (C. C. A. 1932) 59 F.(2d) 361, modified 19 B. T. A. 806, cert den (1932) 53 S. Ct. 79, 287 U. S. 624, 77 L. Ed. 542.

Where petitioner received shares of its capital stock as initial payment upon installment sale of real estate, it realized no gain. 25 B. T. A. 941.

Transfer of stock back to corporation held to result in gain. Warner v. Commissioner of Internal Revenue (C. C. A. 1933) 66 F.(2d) 407, aff 27 B. T. A. 39.

Sale of assets of corporation held direct and not through third person for purpose of computing profit. 27 B. T. A. 120.

Sale in 1920 of trust certificates in fund consisting of stock and its accumulating dividends, where taxpayer has no control over trust res, at price in excess of cost, results in tax upon such excess as profit in 1920, not as part profit in 1920 and part dividends for earlier years. 1 B. T. A. 127.

Where syndicate advanced funds to purchase property of corporation which was transferred to another corporation for cash and stock, each member realized profit to extent of difference between amount advanced and amount received. 1 B. T. A. 573.

Except to extent of interest and costs, taxpayer who foreclosed purchase money mortgage, and bid in property, derived no taxable gain. 1 B. T. A. 706; 2 B. T. A. 359.

Stockholders held to have realized gain on stock transferred to new corporation for cash which was subject to normal and surtax rates under Act 1918 where amount received and dividend from old corporation were used to buy stock in new corporation. 2 B. T. A. 777.

Where real estate is sold for part cash, and purchaser in same year turns property back to vendor, cash payment constitutes taxable income of vendor. 3 B. T. A. 331.

Assignment to stockholders by corporation of contract for purchase of oil leases, and subsequent transfer of leases, in exchange for stock, held not a loan but an investment upon which stockholders realized gain to extent of difference between advances and fair market value of stock. 3 B. T. A. 631.

Proceeds of sale of asset the cost of which had been charged to expense held properly included in income. 4 B. T. A. 37.

Where allied corporations not affiliated, sale of stock by one to the other at inflated value results in taxable income. 4 B. T. A. 753.

Increase in value of property prior to 1913, realized upon subsequent sale, not taxable income. 4 B. T. A. 837.

Gain upon sale of goods in ordinary course of business in the United States is gross income under Act 1918, irrespective of where the increment in value has its situs. 5 B. T. A. 402.

Sale by one member of affiliated group of stock in another member is a sale by the group of its own capital stock. 5 B. T. A. 402.

Where corporation acquires, at book value, stock of affiliated corporation, and thereafter sells it at book value, no gain or loss is realized by affiliated group. 5 B. T. A. 537.

Gain on sale properly included in gross income, though proceeds garnisheed and constructive trust was sought to be impressed thereon. 5 B. T. A. 606.

Sale held completed and income therefrom received and not incomplete because agents of Commissioner served notice of

assessment and demand for taxes and notice of statutory lien. 5 B. T. A. 1073.

Increase in accounts receivable at end of year, resulting from installment sales within year, represents earned income, and additions to reserve for expense of collections and estimated portion of accounts which may not be collected are not deductible as unrealized profits. 6 B. T. A. 285.

Conveyance held a gift and not a sale from which taxpayer derived profit. 6 B. T. A. 558.

A life tenant is not taxable on gain on sale of fee simple. 8 B. T. A. 158.

Inclusion of profits from sale of interest in a railroad, approved. 7 B. T. A. 950.

The Commissioner's determination that certain stock transactions resulted in profitable sales approved. 8 B. T. A. 1011.

Exchange of property for stock though all of the stockholders entered into an agreement restricting sale, held to give rise to taxable income. *Newman v. Commissioner of Internal Revenue* (C. C. A. 1930) 40 F.(2d) 225, aff 10 B. T. A. 158, reh den (C. C. A. 1930) 41 F.(2d) 743, cert den (1930) 51 S. Ct. 33, 282 U. S. 858, 75 L. Ed. 760.

Net profit from sale of assets held taxable income. 10 B. T. A. 1213.

Payment under contract to sell certain land which was subject to contingencies held not taxable income. 10 B. T. A. 1381.

In absence of proof of value on March 1, 1913, the whole of payment for assignment of patents and right to invention held not to be taxable income. *Saunders v. Commissioner of Internal Revenue* (C. C. A. 1928) 29 F.(2d) 834, rev 11 B. T. A. 201.

Corporation held not to have evaded liability for tax on profit from sale. 28 B. T. A. 1067.

Where corporation sold part of assets and amount received therefor was paid directly to two stockholders owning all of stock except single qualifying share, held that transaction was sale by corporation and profit realized, if any, was an element of its gross income. 23 B. T. A. 24.

Transaction held not to amount to sale. 30 B. T. A. 659.

A transaction purporting to be a sale of stock with an option to buy back held, under all the circumstances, not to be a loan but a sale, the gain being taxable. 30 B. T. A. 433.

55. — Difference between cost and sale price

Under Income Tax Act 1916, § 2 (a) (repealed), the difference between the market value of stock, on March 1, 1913, made the basis for determining gain by section 2(c) (repealed), and the price for which it was sold, was "income." *Merchants' Loan & Trust Co. v. Smietanka* (Ill. 1921) 41 S. Ct. 386, 255 U. S. 509, 65 L. Ed. 751, 15 A. L. R. 1305.

Taxable income under the Act of 1916, includes the gain derived from the sale of personal property which has appreciated in value during a series of years over its market value on March 1, 1913, if acquired before that date. *Eldorado Coal, etc., Co. v. Mager* (Ill. 1921) 255 U. S. 522, 41 S. Ct. 390, 65 L. Ed. 757; *Goodrich v. Edwards* (N. Y. 1921) 255 U. S. 527, 41 S. Ct. 390, 65 L. Ed. 758.

However it is only where, and to the extent that, a gain over the original investment is realized upon a sale of property acquired before March 1, 1913, and worth less on that date than when acquired, that there can be any taxable income arising out of such sale. *Goodrich v. Edwards* (N. Y. 1921) 255 U. S. 527, 41 S. Ct. 390, 65 L. Ed. 758; *Walsh v. Brewster* (Conn. 1921) 255 U. S. 536, 41 S. Ct. 392, 65 L. Ed. 762, reversing in part and affirming in part (D. C. 1920) 268 F. 207.

Where new corporation was organized to take over assets and assume liabilities of old corporation and acquired stock of old corporation by issuance of stock in new corporation, the difference between the cost of stock in old corporation and value of stock in new corporation, held taxable as "income" under Act Sept. 8, 1916, §§ 1, 2 (repealed). *Marr v. U. S.* (1925) 45 S. Ct. 575, 268 U. S. 536, 69 L. Ed. 1079, affirming (1923) 58 Ct. Cl. 658.

Stock bequeathed to taxpayer passes on date of an agreement whereby regular distribution of estate is anticipated, and profit on sale is figured on value at that date. *Matthiessen v. U. S.* (1928) 65 Ct. Cl. 484, certiorari denied (1928) 49 S. Ct. 13, 278 U. S. 609, 73 L. Ed. 609.

Realty must be purchased and sold for cash at advance over purchase price and expenses to create taxable profit. *Hinkel v. Motter* (D. C. Kan. 1930) 39 F.(2d) 159,

appeal dismissed by consent (C. C. A. 1930) 42 F.(2d) 1018.

Stockholders held to have realized taxable gains from sale of their stock in corporation for cash in excess of its cost to them, though government officials, immediately on completion of sale, served stockholders with notices of lien for taxes and impounded the money. *Kerr v. Bowers* (C. C. A. N. Y. 1933) 66 F.(2d) 419, *aff* (D. C. 1931) 48 F.(2d) 227, *cert den* (1934) 54 S. Ct. 440, 291 U. S. 663, 78 L. Ed. 1054.

Realty corporation selling land to stockholder realized taxable gain on initial payment, notwithstanding such payment was made with corporation's own stock. *Commissioner of Internal Revenue v. Boca Ceiga Development Co.* (C. C. A. 1933) 66 F.(2d) 1004.

Subsidiary member of affiliated corporate group received taxable income in amount of difference between sum it paid nonmembers for stock of its parent corporation, which owned all of such subsidiary's stock, and higher price for which it sold former stock to other nonmembers of group. *Commissioner of Internal Revenue v. General Gas & Electric Corporation* (C. C. A. 1934) 72 F.(2d) 364.

Internal Revenue Commissioner properly took difference between amount paid by subsidiary member of affiliated corporate group for stock of its parent corporation and higher price, for which it sold such stock, as income of such subsidiary in computing its net income and net taxable income of other affiliates. *Commissioner of Internal Revenue v. General Gas & Electric Co.* (C. C. A. 1934) 72 F.(2d) 364.

Where corporation transferred realty to president who reconveyed property to third party at substantial increase in price and distributed profits to other stockholders under declaration of trust, profit from sale of realty, including profit from second sale, held taxable to corporation. *S. A. MacQueen Co. v. Commissioner of Internal Revenue* (C. C. A. 1934) 67 F.(2d) 857.

Where \$40,000 was subscribed to stock in new bank, \$10,000 of which was to be paid for good will in existing bank, which transferred assets having net worth of \$31,386, difference of \$8,614 was taxable income of existing bank, though paid to two persons owning all of existing bank's shares. *Garrison Bros. State Bank v.*

Commissioner of Internal Revenue (C. C. A. 1933) 67 F.(2d) 486.

Difference between face value of notes and bonds and amount for which issuing corporation purchased and retired them held taxable as income. *Commissioner of Internal Revenue v. Coastwise Transp. Corporation* (C. C. A. 1932) 62 F.(2d) 832.

Difference between total collections from sales and total expenses of business constitutes taxable income. 1 B. T. A. 772.

Where property is purchased for less than its value, gain or loss is realized not upon purchase but only upon subsequent sale or disposition. 4 B. T. A. 266, 269.

Difference between issue price of bonds and price at which corporation bought them held income to corporation. 28 B. T. A. 348.

Where corporation paid debts with another corporation's stock, difference between cost of stock and amount of debts held taxable gain. 27 B. T. A. 346.

56. Profit from sale of public securities

Marland v. United States (Ct. Cl. 1931) 53 F.(2d) 907, *aff on reh* (1933) 3 F.Supp. 611, *cert den* (1933) 54 S. Ct. 74, 290 U. S. 658, 78 L. Ed. 570.

Big Lake Oil Co. v. Heiner (D. C. Pa. 1932) 2 F. Supp. 41, *aff without op* (C. C. A. 1933) 67 F.(2d) 985.

Profits on sale of state or municipal securities constitute "gains, profits, and income" from sales or dealings in property within statute, and hence are taxable. *Willcuts v. Burn* (Minn. 1931) 51 S. Ct. 125, 282 U. S. 216, 75 L. Ed. 304, *rev* (C. C. A. 1929) 35 F.(2d) 29, *which aff* (D. C. 1928) 29 F.(2d) 132.

Profit derived from sale or exchange of securities representing the obligations of a State is taxable. 23 B. T. A. 736.

Transactions entered into between petitioner and bank held to be sales resulting in taxable profit except in case of municipal securities. 19 B. T. A. 1059.

57. — Deferred payments

Though property has been sold at a profit deferred payments which are not represented by notes or secured in any way are not income subject to taxation. *U. S. v. Christine Oil, etc., Co.* (D. C. La. 1920) 269 F. 458.

Where fair market value of 45 per cent. of face amount of notes received by tax-

payer in part payment of stock sold was attributable to notes, for income tax purposes, in fiscal year in which notes were received, the excess over such fair market value received on notes falling due in subsequent years constituted taxable "income" as against contention that no part of annual deferred payments could be considered income until full amount of cost of stock sold had been received. *Wells Amusement Co., Inc. v. Commissioner of Internal Revenue* (C. C. A. 1934) 70 F.(2d) 208.

58. — Exchange of property

Exchange of stock in one distinct corporation for stock in another is an exchange of property, and any gain realized is income and taxable as such. *Noll v. U. S.* (1925) 81 Ct. Cl. 180, certiorari denied (1926) 46 S. Ct. 350, 270 U. S. 649, 70 L. Ed. 780.

Gain from exchange of stock in Michigan corporation for that of South Dakota corporation held taxable income. *Weiss v. U. S.* (1927) 63 Ct. Cl. 1.

Circumstances held not to authorize disregarding corporate form of corporation owned by estate in computing income tax of corporation, including transaction involving exchange of stock in another corporation and stock dividends. *Burnet v. Commonwealth Improvement* (1932) 53 S. Ct. 198, 287 U. S. 415, 77 L. Ed. 309, rev (C. C. A. 1932) 57 F.(2d) 47, which reversed 20 B. T. A. 1189.

Where stockholder, when exchanging stock for other assets, agreed to pay corporation's obligations, there was no taxable profit, since cost, plus liability on obligations, exceeded value of assets received in exchange. *Duffin v. Lucas* (C. C. A. Ky. 1932) 55 F.(2d) 786, cert den (1932) 53 S. Ct. 14, 287 U. S. 611, 77 L. Ed. 531.

Where corporation organized new company, difference between cost of property transferred to new company and value of shares received in return constituted taxable income. *Insurance & Title Guarantee Co. v. Commissioner of Internal Revenue* (C. C. A. 1929) 36 F.(2d) 842, certiorari denied (1930) 50 S. Ct. 352, 281 U. S. 748, 74 L. Ed. 1160.

Exchange of stock of corporation for interest in oil royalty contract covering same property in which corporation had interest held taxable. *Wildschutz v. Commissioner of Internal Revenue* (C. C. A. 1932) 60 F.(2d) 869.

Transaction whereby petitioner disposed of substantially all physical properties in exchange for stock and securities subsequently distributed to stockholders, constituted exchange of property for other property having readily realizable market value resulting in gain. 14 B. T. A. 656.

Sales to friends and acquaintances do not create market value as respects liability for income tax on stock received in exchange. *Clarke v. Welch* (D. C. Cal. 1930) 46 F.(2d) 563.

Opinion testimony in respect to value of oil stock received in exchange was entitled to consideration in determining liability for income tax. *Clarke v. Welch* (D. C. Cal. 1930) 46 F.(2d) 563.

Evidence held insufficient to establish that oil stock received in exchange had readily realizable market value as respected liability for income tax. *Clarke v. Welch* (D. C. Cal. 1930) 46 F.(2d) 563.

59. Rents, royalties and bonuses

Royalties received from coal mining lessee held taxable income in hands of legatee. *Rosenberger v. McCaughn* (D. C. Pa. 1927) 20 F.(2d) 139, aff (C. C. A. 1928) 25 F.(2d) 699, cert den (1928) 49 S. Ct. 10, 278 U. S. 604, 73 L. Ed. 532.

In relation to producing mining properties, royalties are only "income" within revenue laws to extent that they exceed allowance for depletion. *Merle-Smith v. Commissioner of Internal Revenue* (C. C. A. N. Y. 1930) 42 F.(2d) 837, certiorari denied (1931) 51 S. Ct. 182, 282 U. S. 897, 75 L. Ed. 791.

Royalties received by lessor under oil and gas lease cannot be considered "capital gain" for tax purposes. *Ferguson v. Commissioner of Internal Revenue* (C. C. A. 1930) 45 F.(2d) 573, rev 20 B. T. A. 130.

Proceeds of sales of oil received as royalties held taxable as income and not as capital gain arising from sale of capital assets. *Alexander v. King* (C. C. A. Okl. 1930) 46 F.(2d) 235, reversing (D. C. 1929) 38 F.(2d) 256, certiorari denied (1931) 51 S. Ct. 492, 283 U. S. 845, 75 L. Ed. 1455.

Owners of oil-producing land did not become owners of oil until reduction thereof to possession, as regards taxation of royalties. *Alexander v. King* (C. C. A. Okl. 1931) 46 F.(2d) 235, reversing (D. C. 1929) 38 F.(2d) 256, certiorari denied (1931) 51 S. Ct. 492, 283 U. S. 845, 75 L. Ed. 1455.

Minor Indian allottee's oil royalties and bonus for extending lease on lands freed

from restrictions held subject to income taxes. *Bagby v. U. S.* (C. C. A. Okl. 1932) 60 F.(2d) 80, aff (D. C. 1931) 53 F.(2d) 260.

Lease reserving royalties based on quantity of ore mined creates relation of landlord and tenant; royalties are rents and not purchase price of ore sold. 2 B. T. A. 875.

Royalties received after March 1, 1913, for ore mined, removed, and stockpiled prior to March 1, 1913, are choses in action due lessor prior to that date, and are not taxable income. 2 B. T. A. 875.

Royalties received under provisions of long-term lease of ore lands held income and not payments on account of corpus of estate, character of royalties not being altered by reason of having been obtained through bequest or inheritance. 22 B. T. A. 1400.

Price paid for right to use secret process held royalty for license, not proceeds of sale, and accordingly taxable as income. *Kaltenbach v. U. S.* (1929) 66 Ct. Cl. 570.

Royalty payments under coal leases, executed before adoption of income tax amendment, held taxable as income, notwithstanding claim that leases passed title to minerals in place. *Bankers' Pocalontas Coal Co. v. Burnet* (1932) 53 S. Ct. 150, 287 U. S. 308, 77 L. Ed. 325, aff (C. C. A. 1932) 55 F.(2d) 626, which modified 18 B. T. A. 901, motion den (1933) 53 S. Ct. 789, followed without opinion *Strothers v. Burnet* (1932) 53 S. Ct. 152, 287 U. S. 314, 77 L. Ed. 330, aff (C. C. A. 1932) 55 F.(2d) 626, which modified 18 B. T. A. 901, motion den (1933) 53 S. Ct. 789.

Bonus and royalties received by lessor of oil lease, after deductions allowed by taxing act, held taxable income of lessor. *Murphy Oil Co. v. Burnet* (1932) 53 S. Ct. 161, 287 U. S. 299, 77 L. Ed. 318, aff (C. C. A. 1932) 55 F.(2d) 17, which mod 15 B. T. A. 1195.

For tax purposes, royalty paid for oil and gas lease is "income from land," not "income from sale of capital assets." *Ferguson v. Commissioner of Internal Revenue* (C. C. A. 1932) 59 F.(2d) 891.

Where express consideration in contracts assigning oil leases was stated sum in cash, plus additional stated sum payable out of portion of oil and gas produced, such deferred payments or "overriding royalties" paid in taxable year to assignor

lessees held properly included in gross income in assignee corporation's tax return. *Comar Oil Co. v. Burnet* (C. C. A. 1932) 64 F.(2d) 963, cert den (1933) 54 S. Ct. 69, 290 U. S. 652, 78 L. Ed. 565.

Income received by lessor from oil and gas lease, whether by way of initial bonus or as royalties on oil and gas subsequently produced by lessee, is taxable as ordinary income, not as gain from sale of capital assets. *Pitman v. Commissioner of Internal Revenue* (C. C. A. 1933) 64 F.(2d) 740, rev 24 B. T. A. 244.

Where the decedents did not own, receive or control any part of certain oil royalties, ownership being vested in others because of an agreement by which a law suit regarding title to the land was compromised, it is held that the amount of such royalties was improperly included in gross income by the respondent. 16 B. T. A. 1390.

Royalties paid lessor under coal lease held in part taxable as income, though entire royalties did not equal value of coal in place on March 1, 1913. *Smaltz v. McCaughn* (D. C. Pa. 1933) 5 F. Supp. 204.

Right to receive oil royalties as part of consideration of sale held not to be considered as part of consideration for income tax purposes until royalties be actually received. 28 B. T. A. 988.

Rents received under 99-year coal lease held taxable income in part. *Rosenberger v. McCaughn* (C. C. A. Pa. 1928) 25 F. (2d) 699.

Amount of \$1 per acre received by owner of fee under lease granting exploration privilege is taxable income, and is not deductible by lessor as cost to him of leasehold estate demised. 1 B. T. A. 711.

Right of fee simple owner to lease land for oil and gas exploration purposes, as distinguished from value of oil and gas in place, is not susceptible of valuation separate from land itself. 1 B. T. A. 711.

Where short-term lease provided that repairs and improvements should be made at expense of lessee, cost of new heating plant installed by lessee, held income to lessor in form of additional rent. 4 B. T. A. 1129, 1147.

Amount received by lessor, not as rent, but as consideration and compensation for entering into a lease, is income to lessor in year of receipt. 5 B. T. A. 666.

Rents and royalties received under leases of coal lands constitute gross income, and not proceeds from the sale of a capital asset. 8 B. T. A. 607.

Entire amount of royalties under patent licenses is income. 8 B. T. A. 1272.

Payments made to taxpayer of agreed percentage of rentals, collected by his licensee, for use of invention of which taxpayer was part owner, held taxable income to him for year received. 24 B. T. A. 5.

Action of Commissioner, in holding that certain rentals paid to wife of a lessor of property under assignment made by latter constituted income to husband sustained. Ward v. Commissioner of Internal Revenue (C. C. A. 1932) 58 F.(2d) 757, aff 22 B. T. A. 352.

Amount of rent received from real estate held properly included in gross income. 23 B. T. A. 202.

Amount paid corporation for lease of property by sole stockholder did not constitute addition to and part of operating capital rather than income. Nowland Realty Co. v. Commissioner of Internal Revenue (C. C. A. 1931) 47 F.(2d) 1018.

Where the taxpayer occupies a house belonging to a family corporation under such circumstances that there is no contract express or implied to pay rent, the rental value of the house is not taxable to him as income. Hillman v. Commissioner of Internal Revenue (C. C. A. 1934) 71 F.(2d) 688.

Advance rent is taxable in year received. 13 B. T. A. 1230.

Where it appeared that the evident intent of the parties to a conveyance was that the decedent and his wife should have the use of the property free from rent during their lifetimes, held that the respondent erred in including in decedent's taxable income \$200 per month in lieu of rent. 14 B. T. A. 33.

Receipts under oil and gas leases held taxable income, not "gain from sale of capital assets." Berg v. Commissioner of Internal Revenue (1929) 33 F.(2d) 641, 59 App. D. C. 86, certiorari denied (1929) 50 S. Ct. 69, 280 U. S. 598, 74 L. Ed. 644. Compare Ferguson v. Commissioner of Internal Revenue (C. C. A. 1930) 45 F.(2d) 573, rev 20 B. T. A. 130.

Transaction involving payment for oil and gas lease was not "sale," but income.

Burkett v. Commissioner of Internal Revenue (C. C. A. 1929) 81 F.(2d) 667, certiorari denied (1929) 50 S. Ct. 25, 280 U. S. 565, 74 L. Ed. 619.

Evidence showed capital stock of lessees under oil lease received by taxpayer as part of consideration for lease had no market value so that no gain was realized. 14 B. T. A. 675. This holding was reversed (Commissioner of Internal Revenue v. Swenson (C. C. A. 1932) 56 F.(2d) 544) but sustained on a second petition. Swenson v. Commissioner of Internal Revenue (C. C. A. 1934) 60 F.(2d) 280.

Consideration received for an oil and gas lease is part of gross income, for income tax purposes, and is not taxable income from sale of capital assets. Hirschi v. U. S. (1929) 67 Ct. Cl. 637, certiorari denied (1929) 50 S. Ct. 30, 280 U. S. 576, 74 L. Ed. 627.

Payment to lessor, which lease recited was fully earned and should not be applied on rent, held properly treated by Commissioner as accrued income for year when lease was executed. Jennings & Co., Inc. v. Commissioner of Internal Revenue (C. C. A. 1932) 59 F.(2d) 32.

Lessor of right of way easement who transferred easement to lessee's assignee, but continued to receive monthly rentals, retained title to easement and reversion, as regards liability for tax on rentals. Ward v. Commissioner of Internal Revenue (C. C. A. 1932) 58 F.(2d) 757, order den cert stayed (1932) 53 S. Ct. 119, 287 U. S. 657, 77 L. Ed. 567.

Instrument appointing trustee to receive and disburse monthly rentals under leases held not to divest lessee of title to lease, so as to relieve him from returning rentals as taxable income after assignment of rents. Ward v. Commissioner of Internal Revenue (C. C. A. 1932) 58 F.(2d) 757, order den cert stayed (1932) 53 S. Ct. 119, 287 U. S. 657, 77 L. Ed. 567.

Receipts from oil leases, applied by taxpayer to reimburse oil company for cost of development and operation, pursuant to development contract, less proper deductions, held taxable income to taxpayer. Helvering v. Armstrong (C. C. A. 1934) 69 F.(2d) 370.

Payment by lessee purporting to be for buildings on leased land held taxable as bonus paid for leasehold estate. Crile v. Commissioner of Internal Revenue (C. C. A. 1932) 55 F.(2d) 804, cert den (1932) 53 S. Ct. 7, 287 U. S. 600, 77 L. Ed. 523.

Instrument, designated lease, whereby lessor, in consideration of stated sum, rented property so long as oil or gas should be produced in paying quantities, constituted lease, not sale, and bonus or royalties received thereunder represented taxable income. *Umsted v. Commissioner of Internal Revenue* (C. C. A. 1934) 72 F.(2d) 328.

Where enrolled half-blood Creek Indian's homestead and surplus allotments were inherited by full-blood Indian, who, in 1922, executed approved oil and gas leases, bonuses received in 1922 for leases of surplus allotment held taxable to lessor as "income" after proper depletion allowances, but bonuses for leases of homestead allotment were not taxable. *Pitman v. Commissioner of Internal Revenue* (C. C. A. 1933) 64 F.(2d) 740.

Bonus collected by receiver on leasing oil and gas property pending litigation to determine title thereto held taxable income for year in which highest state court affirmed decree upholding taxpayer's title. *Umsted v. Commissioner of Internal Revenue* (C. C. A. 1934) 72 F.(2d) 328.

Initial bonus received by lessor from oil and gas lease held taxable as ordinary income. *Umsted v. Commissioner of Internal Revenue* (C. C. A. 1934) 72 F.(2d) 328.

Whole of bonus received by lessor of oil leases held return of capital which was not taxable, where Commissioner made no estimate of probable royalties which would accrue and bonus received was less than capital investment. *U. S. v. Sherman Development Co.* (D. C. W. Va. 1934) 7 F. Supp. 601.

Cash bonus paid to corporate lessor of oil lands by lessee held taxable as "income" after proper deduction of depletion allowances therefrom. *Emerald Oil Co. v. Commissioner of Internal Revenue* (C. C. A. 1934) 72 F.(2d) 681.

Bonus paid grantor of lease is not a return of capital any more than are royalties paid thereunder, and is taxable income of grantor. 3 B. T. A. 315; 10 B. T. A. 332.

Bonuses for oil and gas leases held in nature of advanced royalties, and were "income from land" for tax purposes. *Ferguson v. Commissioner of Internal Revenue* (C. C. A. 1932) 59 F.(2d) 891.

Cash bonus under oil and gas lease covering land is part of net income from the property. 25 B. T. A. 686.

Bonus in consideration of oil lease held not capital gain. 27 B. T. A. 1264.

Addition of deposit, forfeited by tenant to income held proper, loss for termination of lease not being shown. *Commissioner of Internal Revenue v. Langwell Real Estate Corporation* (C. C. A. 1931) 47 F.(2d) 841. See to same effect 30 B. T. A. 145.

Owners realized income due to erection of improvements by lessees. 13 B. T. A. 1169.

Taxpayer keeping books on accrual basis held not bound to accrue rentals owing to it which probably would never be paid. 29 B. T. A. 1332.

60. Interest

Corporate bondholder was not liable to assessment of income tax on interest due March 1, 1913, payable for the 6 months ending February 28, 1913, under Act Oct. 3, 1913, § 2A, subd. 1 (repealed). *Plant v. Walsh* (D. C. Conn. 1922) 280 F. 722.

Interest on trust fund for permanent maintenance of cemetery held not part of gross or taxable net "income" of seller of lots. *Troost Ave. Cemetery Co. v. U. S.* (D. C. Mo. 1927) 21 F.(2d) 194.

Corporation temporarily waiving interest on advancements held entitled to include interest notes as invested capital for income tax purposes. *Mt. Vernon Car Mfg. Co. v. U. S.* (Ct. Cl. 1931) 48 F.(2d) 449, following 13 B. T. A. 810.

Interest on bank deposits and profits from trading in cotton futures, made by corporation organized as purchasing and forwarding agent for Russian principal, held taxable income, where principal reimbursed agent for price of goods and expenses incurred. All Russian Textile Syndicate, Inc. v. Commissioner of Internal Revenue (C. C. A. 1933) 62 F.(2d) 614, cert den (1933) 53 S. Ct. 696, 289 U. S. 752, 77 L. Ed. 1497.

Interest items collected by consolidated bank held taxable, where merger agreement specifically omitted accrued interest in determining capital furnished by merging bank. *Pontiac Commercial & Savings Bank v. Commissioner of Internal Revenue* (C. C. A. 1930) 41 F.(2d) 602.

Interest collected and paid over by consolidated corporation to stockholders of former corporation as part of merger agreement is not income. *First National Bank of Kulm v. U. S.* (1928) 65 Ct. Cl. 112.

Interest on reparation award made to taxpayer for property seized by Germany during war held not taxable income, where principal and interest amounted only to value of property when acquired by taxpayer in 1913, resulting in no realized gain. *Drier v. Helvering* (1934) 72 F.(2d) 78, 63 App. D. C. 283.

Where principal stockholder of corporation transfers promissory notes to it without consideration which were taken into its assets accounts and increased book surplus thereof, interest on such notes was income to corporation. 23 B. T. A. 135.

Interest paid on promissory note given to corporation in payment for capital stock is income to corporation. 1 B. T. A. 424.

Discount neither received nor accrued within taxable year is not income. 1 B. T. A. 460, 922. When books are on cash basis, discount is income when received; when on accrual basis, it becomes income as earned. 1 B. T. A. 922; 2 B. T. A. 586. So bank on cash basis realizes no income from discounting notes with accrued interest, where no part of notes was paid within year. 3 B. T. A. 1137.

Where par value of stock and interest on unpaid balances were charged to purchaser and he was credited with cash payments and dividends, interest held paid and taxable. 1 B. T. A. 973.

Interest accrued on dividends credited to stockholders on books is not income to corporation. 2 B. T. A. 764.

Taxpayer held not to have realized income from interest accrued but not paid on deferred payments under contract of sale. 2 B. T. A. 788.

Where corporation goes into hands of receiver and defaults in payment of interest on bonds, interest due but not received by taxpayer does not constitute income. 2 B. T. A. 1253.

Accumulated interest received in tax year on loan made in previous year constitutes income. 3 B. T. A. 1038.

Where treasury stock is issued to employees without consideration, to be paid for out of dividends, interest charged on debit balances of accounts is income to corporation. 3 B. T. A. 1045.

Interest on agreements to purchase stock held taxable income. 7 B. T. A. 594.

Amount of usurious interest received in excess of losses is taxable and should be

reported as gross income though recoverable by payers. 7 B. T. A. 773.

Interest upon obligations of corporations operating at a loss held not income of railroad. 8 B. T. A. 225.

Interest which accrued and was paid during taxable year held to be income to recipient. It is immaterial that earnings of debtor were insufficient to pay such interest, or that such interest was paid from funds loaned to debtor by creditor. 17 B. T. A. 962.

Where corporation pays accrued interest on bond subscription payments in worthless bonds, it being at that time unable to pay interest in cash, recipient of bonds does not realize taxable income. 22 B. T. A. 380.

Where interest on bonds held by non-resident alien holders matured during World War but was not claimed till after war, held that tax payable was measurable at statutory rate effective at time of actual payment. 21 B. T. A. 990.

Interest received by a reorganization committee held not taxable income of railroad. *Chicago R. I. & P. Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 47 F.(2d) 990, rev 13 B. T. A. 988, cert den (1931) 52 S. Ct. 7, 284 U. S. 618, 76 L. Ed. 527.

Where officer and large stockholder held corporation's promissory notes on which interest was unpaid, and it might have sold capital assets to pay interest but did not, there was no constructive receipt of interest by noteholder. 16 B. T. A. 1248.

Interest on demand notes is income though collection was not contemplated by payee. 27 B. T. A. 135.

Interest realized by the petitioner under a foreclosure suit instituted by him, in which he became the purchaser of the property constitutes taxable income. 20 B. T. A. 900.

Interest allowed in award of Mixed Claims Commission for personal injuries is taxable. 27 B. T. A. 1339.

Interest included in award of Mixed Claims Commission held taxable income in year of receipt. 28 B. T. A. 566.

Interest accrued on unpaid stock subscriptions held taxable income. 13 B. T. A. 533.

Interest paid to petitioner upon an award in condemnation by a municipality

is includable in petitioner's gross income. 30 B. T. A. 1075.

61. Payments by others for taxpayer's benefit

Where street railway corporation leased all its property under agreement that lessee should make payments to its stockholders, held, that amount paid was income of street railway corporation within Act 1913, and subject to taxation as such. *West End St. Ry. Co. v. Malley* (Mass. 1917) 246 F. 625, 158 C. C. A. 581, certiorari denied (1918) 38 S. Ct. 423, 246 U. S. 671, 62 L. Ed. 931.

Under Act Oct. 3, 1913, § 2, G(a) (repealed) dividends paid by lessee direct to stockholders of railroad corporation, which leased all its property, must be deemed corporate income, and taxable as such. *Rensselaer & S. R. Co. v. Irwin* (N. Y. 1918) 249 F. 726, 161 C. C. A. 636, affirming (D. C. 1917) 239 F. 739, and certiorari denied (1918) 38 S. Ct. 424, 246 U. S. 671, 62 L. Ed. 931.

Payments of lessee telegraph company to stockholders of lessor company pursuant to lease held to constitute "taxable income" of lessor company. *U. S. v. Western Union Telegraph Co.* (D. C. N. Y. 1926) 19 F.(2d) 157.

It has been held that lessee's payment of lessor's "income" tax under lease did not subject lessor to further tax on sum paid. *Boston & M. R. R. v. U. S.* (D. C. Mass. 1927) 23 F.(2d) 343. To the same effect, see *U. S. v. Norwich & W. R. Co.* (D. C. Mass. 1926) 16 F.(2d) 944. The Board of Tax Appeals has reached a contrary conclusion holding that the taxes so paid constituted income to lessor. 5 B. T. A. 1186; 7 B. T. A. 133; 8 B. T. A. 490, 492, 495, 497, 498, 500, 501, 503, 505, 506, 508, 509, 511; 9 B. T. A. 94, 127.

Where one stockholder of corporation guarantees the other stockholders, by indorsement on their certificates, certain dividends, and pays to them their respective proportions of an agreed annual rental secured by said guaranty, the rental so paid is income of the corporation and taxable as such. *American Telegraph & Cable Co. v. U. S.* (1925) 61 Ct. Cl. 326, certiorari denied (1926) 46 S. Ct. 473, 271 U. S. 660, 70 L. Ed. 1137.

The normal tax paid under tax-free covenant by obligor upon coupons of bonds received and cashed by bondholder during year does not constitute taxable income to bondholder. 1 B. T. A. 1048;

4 B. T. A. 837; 5 B. T. A. 27; 10 B. T. A. 53, following *Duffy v. Pitney* (C. C. A.) 2 F.(2d) 230. *Contra, Massey v. Lederer* (D. C. Pa. 1921) 277 F. 123.

Amount received by seller under agreement whereby purchaser was to pay income and excess profits tax as result of transaction constituted additional taxable income. *Acme Coal Co. v. U. S.* (Ct. Cl. 1930) 44 F.(2d) 95.

Accruals by virtue of purchaser's agreement to pay income tax on net profit are subject to adjustment in order to reflect actual income. *Acme Coal Co. v. U. S.* (Ct. Cl. 1930) 44 F.(2d) 95.

Amounts charged to owner of interest in oil field by producing company on basis of 40 per cent. of cost of development under contract to make such charges if oil or gas were produced, until entire cost was liquidated, held not taxable "income" of such owner. *McMurray v. Reynolds* (D. C. Wyo. 1930) 38 F.(2d) 480.

Payments by lessee of railroad of lessor's federal income taxes, though obligation to pay taxes as subsequently determined rested on lessor, held taxable income to lessor. *U. S. v. Mahoning Coal R. R. Co.* (C. C. A. Ohio, 1931) 51 F.(2d) 208, reh den (C. C. A. 1932) 54 F.(2d) 922, cert den (1932) 52 S. Ct. 459, 285 U. S. 559, 76 L. Ed. 947, overr *Mahoning Coal R. Co. v. U. S.* (D. C. Ohio, 1930) 41 F.(2d) 533.

Payment by employer of income taxes assessed against employee pursuant to resolution duly adopted held to constitute additional income to employee which was taxable, since form of payment was immaterial under Revenue Act 1918, § 213 (40 Stat. 1065), and payment of tax by employer was in consideration of employee's services, and was deemed derived by employee from his labor and not merely a gift, though entirely voluntary. *Old Colony Trust Co. v. Commissioner of Internal Revenue* (Mass. 1929) 49 S. Ct. 499, 279 U. S. 716, 73 L. Ed. 918. Mandate conforming to (C. C. A. 1929) 33 F.(2d) 891.

Payment by lessee of net income taxes assessed against lessor pursuant to provisions of lease held to constitute "additional income," taxable to lessor, in view of practice of Treasury Department and Treasury Departmental Regulations. *U. S. v. Boston & M. R. R.* (Mass. 1929) 49 S. Ct. 505, 279 U. S. 732, 73 L. Ed. 929. Mandate conforming to (C. C. A. 1929) 33 F.(2d) 890.

Where taxpayer assigned part of commissions on life insurance to wife who, as

part consideration, agreed to pay certain of taxpayer's debts, amount of moneys paid out by wife from proceeds of commissions to satisfy taxpayer's debts held taxable income. *Hall v. Helvering* (App. D. C. 1934) 68 F.(2d) 300.

Payments made by lessees to lessor, required by coal lease, to reimburse lessor for taxes paid on royalties, held taxable as additional income of lessor. *Wallin Coal Corp. v. Commissioner of Internal Revenue* (C. C. A. 1934) 71 F.(2d) 521.

Lessee under lease requiring him to pay all taxes against income therefrom held not liable for Federal income tax. *Missouri Athletic Ass'n v. Delk Inv. Corporation* (1929) 20 S.W.(2d) 51, 323 Mo. 765.

Payments made by lessees to lessor, required by coal lease, to reimburse lessor for taxes paid on royalties, held taxable as additional income of lessor. *Wallin Coal Corp. v. Commissioner of Internal Revenue* (C. C. A. 1934) 71 F.(2d) 521.

Two per cent. portion of income tax of carriers, borne by Director General of Railroads pursuant to Federal Control Act (temporary) and compensation agreements, is not taxable income of carriers. 1 B. T. A. 1172; 2 B. T. A. 44, 802; 3 B. T. A. 597, 602, 604, 606; 6 B. T. A. 436; 9 B. T. A. 127, 1193.

Prospective Federal tax which, under contract between lessor and lessee, is to be assumed by lessor and paid out of loans from lessee, and which, when paid by lessee, results in debt owing by lessor, is not income of lessor in any year. 2 B. T. A. 991.

Amount of state taxes imposed upon stockholders of national bank and required by state law to be paid directly by bank held income to stockholders. 6 B. T. A. 695.

Income and profits taxes payable by taxpayer but paid by a third person on its behalf pursuant to a contract obligation are income to taxpayer. 6 B. T. A. 1364.

Terminal railroad company collecting amount of income and profits taxes from tenant companies held taxable thereon as income. 9 B. T. A. 304, aff without reference to this point *Belt Ry. Co. of Chicago v. Commissioner of Internal Revenue* (App. D. C. 1929) 36 F.(2d) 541.

An amount paid by majority stockholder to petitioner to induce him to acquire minority stock was a reduction of the

cost of the stock to petitioner and not taxable income to him. 10 B. T. A. 1036.

Question whether reimbursement by Postmaster General of portion of Federal income tax of telegraph company, while under Federal control, constituted taxable income, not determined in absence of evidence of necessary facts. 3 B. T. A. 548.

Amount of petitioner's Federal income and profits taxes for 1920, due and payable in 1921 and paid for its account in that year by lessee of all of its property and business as one of considerations for use of the property, held to be income to petitioner for 1921. 18 B. T. A. 267.

Payment by guarantor of dividend to stockholder held not income to corporation. 25 B. T. A. 195.

62. Donations and contributions

Physical properties and money subsidies, paid to railroad company by republic of Cuba, held not "income," within meaning of Const. Amend. 16, taxable under Act 1916. *Edwards v. Cuba R. Co.* (N. Y. 1925) 45 S. Ct. 614, 268 U. S. 628, 69 L. Ed. 1124, reversing (D. C. 1921) 298 F. 664.

Where corporations in which taxpayer owned all capital stock paid premiums on policies on taxpayer's life and policy proceeds were payable to taxpayer's wife and children and corporations did not benefit from policies, determination that taxpayer received benefit of payments and that they were "income" taxable to him held not error. *Yuengling v. Commissioner of Internal Revenue* (C. C. A. 1934) 69 F.(2d) 971.

Where railroads agreed with bridge company to furnish funds to cover operating expenses, interest, taxes and sinking-fund charges, the railroads to receive preferred stock for all contributions devoted to sinking-funds or retirement of bonds, payments applying on sinking-funds and retirement of bonds were capital contributions and not taxable income. 2 B. T. A. 1001.

Where citizens, to obtain service from public utilities, constructed transmission lines and transferred them to taxpayer, or contributed to construction of facilities, property so acquired was not taxable income to taxpayer, but at most accretions to capital. 4 B. T. A. 155; 8 B. T. A. 225; 9 B. T. A. 365, 1193, 1332; 10 B. T. A. 79, 933; 12 B. T. A. 1002.

Donations received by cemetery association from lot owners, in trust for spe-

cific purpose of caring for and maintaining burial places in perpetuity, held not taxable income. 4 B. T. A. 903.

Payments made to a public utility corporation by a citizen's committee to induce it to erect a cotton compress and warehouse held not income. 8 B. T. A. 155.

The cost to the donor of property deeded to petitioner in 1920 held not to constitute income. 10 B. T. A. 1317.

Amounts paid railroad to induce it to construct a warehouse upon its right of way held not taxable income. 13 B. T. A. 686.

Evidence held not to show that \$64,000 of \$100,000 received by taxpayer for real estate and stock, March 1, 1913, value of which was \$6,910, was gift from father. 16 B. T. A. 1220.

Interest which petitioner as residuary legatee of brother's estate received from corporation indebted to brother for salary, held gift not subject to income tax, corporation being under no obligation to pay interest. 19 B. T. A. 1040.

Amount received in taxable year from corporation held not a gift and therefore, properly included in gross income. 19 B. T. A. 549.

Contributions or donations for construction of spur tracks and other facilities along petitioner's railroad right of way do not constitute taxable income. 18 B. T. A. 665, mod without reference to this point *Kansas City Southern Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 52 F.(2d) 372.

63. Payment to railroads by government

Payment received by railroad from United States to make good operating deficit for guaranty period held taxable income of railroad, and not tax free bounty. *Texas & P. Ry. Co. v. U. S.* (Ct. Cl. 1931) 52 F.(2d) 1040, certiorari granted (1932) 52 S. Ct. 266, 284 U. S. 616, 76 L. Ed. 526, aff (1932) 52 S. Ct. 528, 286 U. S. 285, 76 L. Ed. 1108.

Allowance awarded railroad to make good guaranty of minimum operating income for period following relinquishment of federal control held taxable as income. *Texas & P. Ry. Co. v. U. S.* (1932) 52 S. Ct. 528, 286 U. S. 285, 76 L. Ed. 1108, aff (Ct. Cl. 1931) 52 F.(2d) 1040.

Payment to railroad, not under federal control, of portion of operating deficit suf-

fered during period of such control, held taxable as income for year in which statute authorizing payment became effective, not for year when final award was made, where railroad kept books on accrual basis. *Continental Tie & Lumber Co. v. U. S.* (Ct. Cl. 1932) 52 S. Ct. 529, 286 U. S. 290, 76 L. Ed. 1111, aff (Ct. Cl. 1931) 52 F. (2d) 1045.

Award to railroad not under federal control of portion of its operating deficit suffered during period of federal control held taxable as income. *Continental Tie & Lumber Co. v. U. S.* (Ct. Cl. 1932) 52 S. Ct. 529, 286 U. S. 290, 76 L. Ed. 1111, aff (Ct. Cl. 1931) 52 F.(2d) 1045.

Amount paid railway by government as compensation for use of railroad property during federal control held gain derived from capital, and therefore taxable income. *Kansas City Southern Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 52 F.(2d) 372, certiorari denied (1931) 52 S. Ct. 131, 284 U. S. 676, 76 L. Ed. 572.

Respecting taxable income, court could not assume that Director General forgave claim against railroad for betterments during federal control; statute obligating railroad therefor. *Kentucky & Indiana Terminal R. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 54 F.(2d) 738, cert den (1932) 52 S. Ct. 639, 286 U. S. 557, 76 L. Ed. 1291.

Railroad's taxable income involving interest and bridge tolls appropriated by Director General during federal control held not to arise until 1923, when settlement determined government's liability. *Kentucky & Indiana Terminal R. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 54 F.(2d) 738, cert den (1932) 52 S. Ct. 639, 286 U. S. 557, 76 L. Ed. 1291.

Consideration of agreed compensation paid railroad for use of property during government control, as taxable income, held not to render compensation paid not "just compensation." *Kansas City Southern Ry. Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 52 F.(2d) 372, cert den (1931) 52 S. Ct. 131, 284 U. S. 676, 76 L. Ed. 572.

Railroad company's income tax returns for years of federal control held properly amended by adding further compensation paid by government for such years after termination of such control. *Commissioner of Internal Revenue v. Midland Valley R. Co.* (C. C. A. 1932) 57 F.(2d) 1042.

Sum allowed owner for undermaintenance of railroad while in control of Director General of Railroads held reserve for deferred maintenance due to waste or impairment of capital, and not taxable "gains, profits, and income derived from dealings in property." Commissioner of Internal Revenue v. Norfolk & Southern R. Co. (C. C. A. 1933) 63 F.(2d) 304, cert den (1933) 54 S. Ct. 91, 200 U. S. 672, 78 L. Ed. 580.

Allowance received by taxpayer for undermaintenance of railroad during period of federal control held not "income" and not taxable. Chicago & N. W. Ry. Co. v. Commissioner of Internal Revenue (C. C. A. 1933) 66 F.(2d) 61, cert den (1933) 54 S. Ct. 90, 290 U. S. 672, 78 L. Ed. 580.

Where railroad kept books on accrual basis, difference between annual agreed compensation paid to railroad by government for occupation during federal control, and amount certified by Interstate Commerce Commission as representing annual income during test period, held subject to allocation to years of federal control, and did not constitute income for year during which compensation was agreed on. Helvering v. St. Louis Southwestern Ry. Co. (C. C. A. 1933) 66 F.(2d) 633, cert den (1934) 54 S. Ct. 632, 292 U. S. 626, 78 L. Ed. 1481.

Income received from elevated railway by trustees appointed by state to operate the railway for period of public operation held taxable by federal government. Helvering v. Powers (1934) 55 S. Ct. 171, 79 L. Ed. —, rev (C. C. A. 1934) 68 F.(2d) 634.

Computation of income of railroad from federal guaranty. 28 B. T. A. 1026.

Railroad had income where after Federal control the Director General accounted for shortage of materials in amount in excess of cost. 13 B. T. A. 1154.

III. EXEMPTIONS

81. In general

See also cases under preceding subdivision of this note.

Federal Court receiver is not "officer or employee" of United States, whose earnings are tax-exempt under Act 1917. Fleming v. Bowers (D. C. N. Y. 1926) 11 F.(2d) 789.

Property held by bankruptcy trustee or receiver is not tax exempt. Buckley v. Commissioner of Internal Revenue (C. C.

A. 1933) 66 F.(2d) 394, cert den (1933) 54 S. Ct. 206, 290 U. S. 698, 78 L. Ed. 600.

Former governmental ownership of private individual's property does not impart tax exemption to property or its earnings. Buckley v. Commissioner of Internal Revenue (C. C. A. 1933) 66 F.(2d) 394, cert den (1933) 54 S. Ct. 206, 290 U. S. 698, 78 L. Ed. 600.

The Public Health Service is not a part of the military forces of the United States and the personnel is not entitled to the exemption from taxation granted in section 213 (b) (8) Act of 1918 (repealed). (1921) 33 Op. Atty. Gen. 56.

Army officer is not entitled to \$3,500 exemption under sec. 213 (b) (8), Act of 1918 (repealed) in making return of income for 1921. 2 B. T. A. 428; 3 B. T. A. 596.

The pay of retired Army officer not exempt under section 213 (b) (9) of the Revenue Act of 1921 (repealed) as a pension. 8 B. T. A. 1105.

Evidence held insufficient to show income exempt from tax. 11 B. T. A. 245.

Income from oil and gas lease upon lands owned by municipal corporation held not exempt from Federal income and profits taxes. 22 B. T. A. 551.

Exemption from tax is never presumed, but, on the other hand, the presumption is in favor of the taxing power and the burden is upon the claimant to establish clearly and beyond doubt its right to exemption. It is well recognized that "taxation is the rule and exemption the exception." 14 B. T. A. 1214.

Payment by city held not made on municipal obligation so as to be exempt. 29 B. T. A. 35.

82. Life insurance

Section 233 of the Revenue Act of 1918 adopted the definition of gross income applicable to individuals which excluded "the proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured." There was no purpose, in the exemption, to distinguish between individual beneficiaries and corporate beneficiaries, and the proceeds of insurance taken by a corporation on the life of an important official, to secure its financial position and indemnify itself against loss of earning power in case of his death, were not taxable as income. U. S. v. Supplee-Biddle Hardware Co. (1924) 265 U. S. 189.

44 S. Ct. 546, 68 L. Ed. 970, affirming (1923) 58 Ct. Cl. 343.

Where corporation took out policies in its own name insuring president's life and paid premiums, and thereafter the stockholders entered into an agreement between themselves authorizing the directors to promptly pay proceeds of policies, when received, as dividends on common stock, amount of proceeds paid to stockholders held not exempt from income tax as "amount received under a life insurance contract." *Cummings v. Commissioner of Internal Revenue* (C. C. A. 1934) 73 F.(2d) 477.

Proceeds of an accident insurance policy are not taxable income. (1918) 31 Op. Atty. Gen. 304.

Deduction to be made for income tax purposes from proceeds of life policies at maturity of term determined. *Alexander v. Lucas* (D. C. Ky. 1927) 21 F.(2d) 68, affirmed (C. C. A. 1927) 27 F.(2d) 237.

Proceeds of life insurance policies procured by corporation on life of its president held dividends and taxable. 28 B. T. A. 1045.

Proceeds of insurance policy taken out by corporation on life of officer is not taxable income. 4 B. T. A. 697.

Annual payment to beneficiary under policies providing for interest and apportioned dividends on face of policies held properly included in gross income. 20 B. T. A. 713.

83. Bequests, devises, and inheritances

Legacies given to persons named as executors, in lieu of compensation or commissions to which they would otherwise be entitled, are "property acquired by bequest," within Act Oct. 3, 1913, § 2, subd. B (repealed) and are not taxable as "income" for personal services, as actual service is not required as a condition of payment. *U. S. v. Merriam* (N. Y. 1923) 44 S. Ct. 69, 263 U. S. 179, 68 L. Ed. 240 29 A. L. R. 1547, affirming (C. C. A. 1922) 282 F. 851, which reversed (D. C. N. Y. 1921) 275 F. 100.

Where will created trust, and provided for payment of portion of income to testator's son-in-law, held, such payments were taxable "income," under Income Tax Act 1913, § 2, A, subs. 1, 2, B, D, and E (repealed) and not a "gift" by will or bequest, exempt from such tax. *Irwin v. Gavit* (N. Y. 1925) 45 S. Ct. 475, 268 U. S. 161, 69 L. Ed. 807, reversing (C.

A. 1923) 295 F. 84, which affirmed (D. C. 1921) 275 F. 643.

Income from devise is subject to tax. *McCann v. U. S.* (Ct. Cl. 1931) 48 F.(2d) 446.

It must be assumed that Congress, in providing in Act 1913, § 2B (repealed) that property acquired by bequest is not included in income, intended to give the term "bequest" its settled construction, well known and sanctioned by judicial decision. *Merriam v. U. S.* (C. C. A. N. Y. 1922) 282 F. 851, affirmed (1923) 44 S. Ct. 69, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

Under Act 1913, § 2B, providing that income includes the income, but not the value of property "acquired by gift, bequest, devise, or descent," the quoted words are words of exception, and not of exemption. *Merriam v. U. S.* (C. C. A. N. Y. 1922) 282 F. 851, affirmed (1923) 44 S. Ct. 69, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

Under will providing for "annuities" from funds set apart by trustee, income held taxable and not exempt as "gift." *Heiner v. Beatty* (C. C. A. Pa. 1927) 17 F. (2d) 743, affirmed (1927) 48 S. Ct. 319, 276 U. S. 598, 72 L. Ed. 723.

Payment made under will to executor held compensation for services, and not "bequest," and subject to income tax under Act of 1916. *Keam v. Bowers* (C. C. A. N. Y. 1927) 22 F.(2d) 465, affirming (D. C. 1926) 14 F.(2d) 993; *Grant v. Rose* (D. C. Ga. 1928) 24 F.(2d) 115.

Payments of net income from a trust estate created by will under the terms of which they were to be made by the trustees to the testator's widow, are not bequests exempt from taxation under the Acts of October 3, 1913, and September 8, 1916, but are subject to the income tax. *Verner v. U. S.* (1926) 62 Ct. Cl. 574, certiorari denied (1927) 48 S. Ct. 18, 275 U. S. 524, 72 L. Ed. 406.

Where widow, to whom testator devised residue of estate with privilege of using principal, and remainder over, gave part of property to sons, and income was thereafter paid them, income on property transferred was not assessable against widow in determining tax. *Kaufmann v. Commissioner of Internal Revenue* (C. C. A. 1930) 44 F.(2d) 144.

Gift or bequest of capital assets, though payable in installments or consisting of interest due at future date, does not con-

stitute "income." *Waud v. U. S.* (Ct. Cl. 1931) 48 F.(2d) 444.

Where promisee bequeathed annual payments under contract with steel manufacturer contingent on iron ore received, payments to legatee did not constitute taxable "income" until they equaled value of bequest as appraised for federal estate tax. *Burnet v. Logan* (1931) 51 S. Ct. 550, 283 U. S. 404, 75 L. Ed. 1143, aff. (C. C. A. 1930) 42 F.(2d) 103; *Burnet v. Bruce* (1931) 51 S. Ct. 550, 283 U. S. 404, 75 L. Ed. 1143, aff. (C. C. A. 1930) 42 F.(2d) 197.

Family allowance to decedent's widow, whether out of income or corpus of decedent's estate, is not taxable "income." *Buck v. McLaughlin* (C. C. A. Cal. 1931) 48 F.(2d) 135.

Statute providing for taxing income distributable to beneficiaries periodically applies only to income paid as such to beneficiary. *Burnet v. Whitehouse* (1931) 51 S. Ct. 374, 283 U. S. 148, 75 L. Ed. 916, aff. (C. C. A. 1930) 38 F.(2d) 162, which aff. 7 B. T. A. 600.

Annuity chargeable against corpus of estate held "bequest," nontaxable to annuitant as part of "income." *Burnet v. Whitehouse* (1931) 51 S. Ct. 374, 283 U. S. 148, 75 L. Ed. 916, aff. (C. C. A. 1930) 38 F.(2d) 162.

Money paid taxpayer under his mother's will leaving such sum "for his compensation as executor and trustee" held taxable "income," and not "gift" or "bequest." *Rose v. Grant* (C. C. A. Ga. 1930) 39 F.(2d) 338, affirming (D. C. 1929) 32 F.(2d) 812, certiorari dismissed (1931) 51 S. Ct. 341, 283 U. S. 867, 75 L. Ed. 1471.

Annuity in lieu of statutory rights in estate held exempt from taxation under Acts 1918, 1921, until purchase price returned. *Warner v. Walsh* (D. C. Conn. 1928) 27 F.(2d) 952.

Annuity received by widow in lieu of dower is not taxable. *Allen v. Brandeis* (C. C. A. Neb. 1928) 29 F.(2d) 363.

Amount paid to widow under will of husband from trust established by his brother held "bequest," not subject to income tax. *Dobbins v. Commissioner of Internal Revenue* (C. C. A. 1929) 31 F.(2d) 935.

Bequest of part of testator's income from partnership to sons, who were his partners, held "legacy," not taxable income as to sons. *Wood v. U. S.* (D. C. Pa. 1931) 55 F.(2d) 733.

Where widow received in lieu of dower annuity chargeable against both corpus of fund and income from it, annuity payments received after value of dower interest had been returned to her were "property acquired by bequest," and need not be returned as part of annuitant's gross income in determining income taxes. *Warner v. Commissioner of Internal Revenue* (C. C. A. 1933) 66 F.(2d) 403, cert den (1933) 54 S. Ct. 124, 290 U. S. 688, 78 L. Ed. 593.

Income of residuary legatees is subject to income tax, unless exempted by statute, whether derived from capital passing to them or not. *Slocum v. Bowers* (D. C. N. Y. 1926) 15 F.(2d) 400, affirmed (C. C. A. 1927) 20 F.(2d) 350.

Where taxpayer made no attempt to show that portion of corpus was not subject to taxation as income to estate, it was not error to treat whole as income. *Mulqueen v. Commissioner of Internal Revenue* (C. C. A. 1933) 65 F.(2d) 365, cert den (1933) 54 S. Ct. 62, 290 U. S. 644, 78 L. Ed. 559.

Widow's annuity under deceased husband's will, in lieu of statutory rights in estate is not taxable income. *Brandeis v. Allen* (D. C. Neb. 1927) 22 F.(2d) 415, aff. (C. C. A. 1928) 29 F.(2d) 363.

Income from decedent's estate, though not deducted by executor in his return of estate's income constitutes taxable income. *Little v. White* (C. C. A. Mass. 1931) 47 F.(2d) 512.

Income of estate paid to residuary legatee during administration, though payment was not required by will constitutes taxable income. *Riker v. Commissioner of Internal Revenue* (C. C. A. 1930) 42 F.(2d) 150.

Where widow received in lieu of dower annuity chargeable against both corpus of fund and income from it, annuity payments received after value of dower interest had been returned to her were "property acquired by bequest," and need not be returned as part of annuitant's gross income in determining income taxes. *Warner v. Commissioner of Internal Revenue* (C. C. A. 1933) 66 F.(2d) 403, cert den (1933) 54 S. Ct. 124, 290 U. S. 688, 78 L. Ed. 593.

Amounts received by taxpayer under wills of mother and sister, to which amounts mother's estate was entitled under will of taxpayer's father and which were received by father's estate as trust income under will of taxpayer's uncle,

held "bequests" and hence not to be included in taxpayer's gross "income" under income tax law. Commissioner of Internal Revenue v. Dobbins (C. C. A. 1934) 72 F.(2d) 984.

Where will gave life estate in all of testator's property to surviving wife and wife elected to take life estate in lieu of statutory dower, surviving wife held not purchaser of life estate, and income therefrom was taxable as against contention that income was not subject to tax because wife had not, up to year in question, received amount of her invested capital, to wit, value of relinquished statutory dower right and as against contention that she should not be taxed on amount in excess of actual withdrawals. Helvering v. Schaupp (C. C. A. 1934) 71 F.(2d) 736.

In Helvering v. Schaupp (C. C. A. 1934) 71 F.(2d) 736, it was said that the cases of Allen v. Brandeis (C. C. A. Neb. 1928) 29 F.(2d) 363, Warner v. Walsh (C. C. A. Conn. 1926) 15 F.(2d) 367 and U. S. v. Bolster (C. C. A. Mass. 1928) 28 F.(2d) 760, were overruled by Helvering v. Butterworth (1933) 54 S. Ct. 221, 290 U. S. 365, 78 L. Ed. 365.

Distributions held exempt as made pursuant to bequest and hence not deductible in determining net income of trust. 28 B. T. A. 733.

Where by will real property was devised to children subject to annuity to mother, annuity was charge first against income and as to any arrearage against corpus and income being less than annuity, none of it represented income taxable to children. 14 B. T. A. 915, mod 16 B. T. A. 1242.

Relinquishment of dower right by widow by election to take under will did not amount to purchase by her of interest in trust fund equal to dower, and value thereof could not be returned to her tax free. 28 B. T. A. 78.

Distributions held exempt as made pursuant to bequest and hence not deductible in determining net income of trust. 28 B. T. A. 733.

Residuary legatee acquires stock within sec. 213 (b) (3), Act 1918 (repealed) on date of distribution by executor and not on date of death of testator or date of transfer to legatee's name on books of corporation. 2 B. T. A. 921.

Income distributed annually to beneficiary of life interest not devise or be-

quest, but taxable income of beneficiary. 3 B. T. A. 260.

Income received by owner of life estate acquired by will is taxable and can not be regarded as nontaxable legacy or bequest. 5 B. T. A. 261.

Annuities paid to beneficiary under will held to have become charges against corpus of estate and exempt from tax under sec. 213 (b) (3), Act 1918 (repealed). 6 B. T. A. 163.

Where income from a trust was payable in event of beneficiary's death, to his estate, right of his estate in income came into fruition under trust and not through bequest of beneficiary, and annual income was taxable. 6 B. T. A. 871.

That right of beneficiary was valued and included in his gross estate, and that state courts held part of income to be corpus, can affect taxability of income. 6 B. T. A. 871.

Income distributed to beneficiaries held income taxable to beneficiaries and not distribution of part of corpus acquired by bequest. 6 B. T. A. 900; 8 B. T. A. 651, aff on other grounds Commissioner of Internal Revenue v. Widener (C. C. A. 1929) 33 F.(2d) 833.

Distributions under testamentary trust are income which is not reduced by value of right to receive them. 8 B. T. A. 651, aff on other grounds Commissioner of Internal Revenue v. Widener (C. C. A. 1929) 33 F.(2d) 833.

84. Gifts

See, also, preceding note.

Amount paid to general superintendent and director of corporation under directors' resolution for distribution held not a gift, but taxable "income," within meaning of Revenue Act 1918, § 213, subd. (a), and subdivision (b), (3) (repealed). Noel v. Parrott (C. C. A. Va. 1926) 15 F.(2d) 669, reversing (D. C. 1925) 8 F.(2d) 368, certiorari denied (1927) 47 S. Ct. 457, 273 U. S. 754, 71 L. Ed. 875.

Evidence held to show that fund distributed to officers and employees of corporation was intended as gift, and not taxable income, in consideration of future services and fidelity. Noel v. Parrott (C. C. A. Va. 1926) 15 F.(2d) 669, reversing (D. C. 1925) 8 F.(2d) 368, which rev 1 B. T. A. 1, 105 certiorari denied (1927) 47 S. Ct. 457, 273 U. S. 754, 71 L. Ed. 875.

Interest purchased in the capital of a going concern includes the good will,

which can not be separated therefrom for the purpose of treating it as a gift, and as such exempt. *Betts v. U. S.* (1929) 62 Ct. Cl. 1, certiorari denied (1927) 47 S. Ct. 475, 273 U. S. 762, 71 L. Ed. 870.

Whether payment of money constitutes taxable "compensation for personal service," or nontaxable "gift," depends upon intention of parties and surrounding facts and circumstances. *Schumacher v. U. S.* (Ct. Cl. 1932) 55 F.(2d) 1007.

Bonus paid to president of railroad company by holding corporation which owned former's capital stock, upon termination of employment, held "compensation for personal service" and not "gift," and therefore taxable income. *Schumacher v. U. S.* (Ct. Cl. 1932) 55 F.(2d) 1007.

Even if employer's written promise was without consideration because of prior contract, additional payments thereunder were not necessarily "gift" as respects income tax. *Weagant v. Bowers* (C. C. A. N. Y. 1932) 57 F.(2d) 679, rev (D. C. 1930) 49 F.(2d) 934.

As regards income tax, finding that employer's purported contract to pay inventor certain share of proceeds of patent rights was intended as memorial of gift, and that payments thereunder were gift held not sustained. *Weagant v. Bowers* (C. C. A. N. Y. 1932) 57 F.(2d) 679, rev (D. C. 1930) 49 F.(2d) 934.

Sum voted to a corporation president in recognition of services for past ten years held a gift. *Blair v. Rosseter* (C. C. A. 1929) 33 F.(2d) 286, aff 12 B. T. A. 254.

Stock dividend received by corporation, 33 per cent. of which dividend was distributed by it to taxpayer owning 4 per cent. of its stock, held taxable "dividend," not "gift." *Lincoln Nat. Bank v. Burnet* (1933) 63 F.(2d) 131, 61 App. D. C. 354.

Proceeds of contract for attorney's fees held taxable as attorney's income, notwithstanding assignment to wife of one-half of attorney's contingent interest therein. *Daugherty v. Commissioner of Internal Revenue* (C. C. A. 1933) 63 F.(2d) 77.

Sum voted by directors to president of corporation, as "honorarium" on president's voluntary resignation, held "gift," for tax purposes. *Cunningham v. Commissioner of Internal Revenue* (C. C. A. 1933) 67 F.(2d) 205.

Money paid under contract with executrix of deceased lawyer relating to handling of unfinished cases which deceased

had on contingent fee basis held not gift to widow, but taxable income to estate. *Mulqueen v. Commissioner of Internal Revenue* (C. C. A. 1933) 65 F.(2d) 305, cert den (1933) 54 S. Ct. 62, 290 U. S. 644, 78 L. Ed. 559.

Whisky warehouse certificates acquired by taxpayer from its majority shareholder without payment of consideration, and involving no ownership by third party, held "gift" as regards value thereof for ascertaining profits for income tax. *Commissioner of Internal Revenue v. Rosenbloom Finance Corporation* (C. C. A. 1933) 66 F.(2d) 556, cert den (1933) 54 S. Ct. 127, 290 U. S. 692, 78 L. Ed. 596.

Contributions received by deputy city clerk from bridegrooms after performing civil marriages held not exempt from income tax as "gifts." *U. S. v. McCormick* (C. C. A. N. Y. 1933) 67 F.(2d) 867.

Evidence held to show that cancellation of indebtedness of principal stockholder to corporation in year when corporation made profits, though it made no distribution thereof to stockholders, was a "dividend," not "gift," and therefore taxable income. *Fitch v. Helvering* (C. C. A. 1934) 70 F.(2d) 583.

Gain derived from the sale of personal property acquired by gift constitutes taxable income. *Rice v. Eisner* (C. C. A. N. Y. 1926) 16 F.(2d) 358, certiorari denied (1927) 47 S. Ct. 477, 273 U. S. 764, 71 L. Ed. 880.

Where seller suffered loss on contract, buyer's voluntary payment covering such loss was not "taxable income." *Rice, Barton & Fales, Inc., v. Commissioner of Internal Revenue* (C. C. A. 1930) 41 F.(2d) 339.

Gratuitous forgiveness of subsidiary's indebtedness held contribution to subsidiary's capital and not taxable income to subsidiary. 28 B. T. A. 621.

Amount voluntarily paid by broker on resale of securities previously purchased from taxpayer constitutes taxable income. 2 B. T. A. 1239.

A gift is a valid transfer of property from one to another without consideration or compensation therefor. 5 B. T. A. 1042.

Elements are intention to give, transfer of title or delivery, and acceptance by donee. 3 B. T. A. 1042.

Gains from bookmaking operations, though recoverable under state law, are acquired by winner as purchaser and not as donee, and are income. 1 B. T. A. 326.

Transfer upon books of partnership of part of one partner's capital to another partner is a gift and not income. 1 B. T. A. 350.

Amount equal to regular salary, paid to corporate officer during illness, held compensation and not a gift. 1 B. T. A. 1104.

Payment to taxpayer for bringing manufacturer in contact with parties from whom it secured material at advantageous price held compensation for services and not a gift. 3 B. T. A. 50.

Contributions by railroad to employees' relief association, held not property acquired by association by gift and exempted from taxation under sec. 213 (b) (3), Act 1918 (repealed). 4 B. T. A. 713.

Whether payment by corporation was intended as a gift or as additional compensation may be ascertained from resolutions authorizing payment and manner in which payment was treated in corporation's books and returns. 3 B. T. A. 1042.

Payments by corporation to stockholder and director, specifically designated as gifts, held gifts. 3 B. T. A. 1042.

Where taxpayer rendered valuable services and advice without any promise of compensation stock issued to him held a gift in satisfaction of moral obligation and not compensation for services. 6 B. T. A. 1371.

That certain payments were gifts rather than taxable income held not proved. 7 B. T. A. 726.

Cash gifts received by taxpayer from his father held erroneously added to taxable income. 11 B. T. A. 565.

Payment to president of corporation held a gift. 12 B. T. A. 254.

Where annuity is assigned to children payments to children thereafter cannot be included in parent's gross income. 20 B. T. A. 563.

Evidence held not to establish gift from employer but rather payment for past services. 22 B. T. A. 881.

Distribution to principal shareholders of corporation not strictly in proportion to their holdings is within statutory definition of dividend, and fact that it was referred to as gift in corporate resolution authorizing it held insufficient to support conclusion that distribution to petitioner was gift. 23 B. T. A. 1303.

Transfer of shares of stock by owner to himself as trustee for certain named donees held a gift. 18 B. T. A. 571.

On record, held that evidence failed to establish contentions of petitioner respecting gift of certain stock by him to his wife in year 1920, and sale of certain other stock by him to his wife in year 1921. 18 B. T. A. 204.

Funds of stockholders of holding company voluntarily contributed to reward officers and employees of operating company for services, held gifts and not additional compensation. 17 B. T. A. 1002.

Petitioner failed to establish that amount of salary paid him pursuant to resolution of the board of directors, for that portion of the taxable year subsequent to his resignation from the company, was a gift and therefore not taxable. 16 B. T. A. 274.

Where testator bequeathed entire estate to wife and wife gave children shares of stock in company liquidated same day, transfer of stock was gift and no gain resulted from liquidation. 16 B. T. A. 187.

Where owners of tract of land had executed an oil and gas lease and subsequent to execution of lease and subsequent to discovery of oil on the premises gratuitously assigned part of royalty to their children for the term of one year, held, that the donees were not taxable on any part of the royalty received by them. 16 B. T. A. 485.

Evidence held insufficient to establish that petitioner made completed gift to wife of certain corporate stocks prior to taxable years, and action of Commissioner in including dividends therefrom in petitioner's reported income was approved. 19 B. T. A. 1260, mod without reference to this point Marshall v. Commissioner of Internal Revenue (C. C. A. 1932) 57 F.(2d) 633.

Salary paid to veteran employee after resignation held salary and not gift. 23 B. T. A. 23, aff because involving facts only Longee v. Commissioner of Internal Revenue (C. C. A. 1933) 63 F.(2d) 112.

Cancellation by solvent corporation of debt of president held not gift. 25 B. T. A. 418.

Dividends received on stock promised as gift before delivery held taxable as donor's income, to donees. 28 B. T. A. 231.

Where a corporation canceled certain notes of its principal stockholders, which

had been transferred to it in part payment of its capital stock, the amounts of the canceled debts are dividends and not tax-free gifts. 20 B. T. A. 473.

85. Interest on government and state obligations

In income tax statute, exemption of interest on "obligations" of state or political subdivision held applicable only to obligations that might be issued in exercise of borrowing power of state or subdivision. United States Trust Co. of New York v. Anderson (C. C. A. N. Y. 1933) 65 F.(2d) 575, aff (D. C. 1932) 60 F.(2d) 291.

Statutory exemption, from income tax, of interest on "obligations" of state or political subdivision held not applicable to interest received pursuant to law on award in city's condemnation proceeding. United States Trust Co. of New York v. Anderson (C. C. A. N. Y. 1933) 65 F.(2d) 575, aff (D. C. 1932) 60 F.(2d) 291.

See to the same effect 26 B. T. A. 745.

Interest paid by United States on refund of illegal taxes held not deductible from income as interest upon "obligation of United States." American Viscose Corporation v. Commissioner of Internal Revenue (C. C. A. 1932) 56 F.(2d) 1033, which aff 19 B. T. A. 937, cert den (1932) 53 S. Ct. 17, 287 U. S. 615, 77 L. Ed. 534.

Evidence showed that bank received interest from dealer delivering tax-exempt bonds and borrowing face value and not from bonds, and hence proceeds were subject to taxation. First Nat. Bank in Wichita v. Commissioner of Internal Revenue (C. C. A. 1932) 57 F.(2d) 7.

Ferry corporation majority of whose capital stock was, and is now all, owned by town located on island, held instrumentality of state and not subject to federal income tax. Jamestown & Newport Ferry Co. v. Commissioner of Internal Revenue (C. C. A. 1930) 41 F.(2d) 920.

Interest collected by purchaser of Virginia debt certificates from purchase and after exchange of certificate for West Virginia bonds held tax exempt as "interest" on state obligation. Landon v. Commissioner of Internal Revenue (C. C. A. 1932) 59 F.(2d) 989, reh den (C. C. A. 1932) 61 F.(2d) 1033.

Portion of West Virginia bonds covering interest on Virginia debt held not exempt from federal taxation as "interest" on state obligation. Landon v. Commis-

sioner of Internal Revenue (C. C. A. 1932) 59 F.(2d) 989, reh den (C. C. A. 1932) 61 F.(2d) 1033.

Profit on exchange of Virginia debt certificates for West Virginia bonds held taxable income, against contention tax was on "instrumentalities of state." Landon v. Commissioner of Internal Revenue (C. C. A. 1932) 59 F.(2d) 989, reh den (C. C. A. 1932) 61 F.(2d) 1033.

Statutory provision that term "gross income" shall not include interest on obligations of states is merely declaratory of constitutional limitation, denying Congress power to tax states to carry on governmental functions. Norfolk Nat. Bank of Commerce, etc., v. Commissioner of Internal Revenue (C. C. A. 1933) 66 F.(2d) 48, rev 26 B. T. A. 1111.

Congress has no authority to limit constitutional exemption from taxation to state obligations of any particular form. Norfolk Nat. Bank of Commerce, etc., v. Commissioner of Internal Revenue (C. C. A. 1933) 66 F.(2d) 48.

Statutory exemption, from income tax, of interest on "obligations" of state or political subdivision held not applicable to interest received pursuant to law on award in city's condemnation proceeding. United States Trust Co. of New York v. Anderson (C. C. A. N. Y. 1933) 65 F.(2d) 575, aff (D. C. 1932) 60 F.(2d) 291. See to the same effect 26 B. T. A. 1040.

In income tax statute, exemption of interest on "obligations" of state or political subdivision held applicable only to obligations that might be issued in exercise of borrowing power of state or subdivision. United States Trust Co. of New York v. Anderson (C. C. A. N. Y. 1933) 65 F.(2d) 575, aff (D. C. 1932) 60 F.(2d) 291.

Taxation of interest income received by purchaser of delinquent tax sale certificates covering municipal taxes in different states held not invalid as resulting in direct burden on governmental instrumentalities of different states within implied prohibition against federal taxation. Wiltsie v. U. S. (Ct. Cl. 1933) 3 F.Supp. 743, cert den (1934) 54 S. Ct. 440, 291 U. S. 664, 78 L. Ed. 1055.

Right to treat as exempt income interest on Liberty and Victory bonds denied for want of evidence as to amount collected. 2 B. T. A. 286.

Interest on notes of political subdivisions of Rhode Island and Massachusetts was erroneously reported as taxable in-

come. 8 B. T. A. 555, rev on other grounds Rhode Island Hospital Trust Co. v. Commissioner of Internal Revenue (C. C. A. 1928) 20 F.(2d) 338.

For normal-tax purposes, interest on Liberty bonds eliminated from taxable income. 11 B. T. A. 565.

Ground rent received by petitioner from the mayor and city council of Baltimore, Md., the leased land being used by the city for school purposes, held not exempt. 17 B. T. A. 987.

Interest on award for property condemned by city is taxable. 27 B. T. A. 803.

Where deficiency warrants from State were used as security in obtaining a loan, the interest paid on such loan was not paid on indebtedness incurred to carry obligations or securities "the interest upon which is wholly exempt from taxation." 26 B. T. A. 594.

86. Compensation of state and municipal officers and employees

Consulting engineers, advising states and subdivisions with regard to water and sewage projects, held not "officers" or "employees" of state or subdivision, whose earnings were exempt from taxation under Act 1917. Metcalf v. Mitchell (Mass. 1926) 46 S. Ct. 172, 269 U. S. 514, 70 L. Ed. 384.

Compensation of real estate expert in condemnation proceedings by city held not exempt from income tax, as money received for services as instrumentality of state government. Lyons v. Reinecke (C. C. A. Ill. 1926) 10 F.(2d) 3.

Compensation of auditor appointed by orphans' court to ascertain financial worth of surety companies held not exempt. Miller v. McCaughn (C. C. A. Pa. 1928) 27 F.(2d) 128.

Declaration held too indefinite and uncertain as to work plaintiff was employed to do and did, and whether it was such as to exempt money paid therefor from assessment. Miller v. McCaughn (C. C. A. Pa. 1928) 27 F.(2d) 128.

Society for the Prevention of Cruelty to Children, held not an agency of the state, and salaries of its officers held subject to income tax, under Act 1917. Lindsay v. Bowers (D. C. N. Y. 1927) 17 F.(2d) 264.

New York corporation authorized to act as executor is not officer, employee, or instrumentality of state government and

is not exempt from income tax on fees. New York Trust Co. v. U. S. (1927) 63 Ct. Cl. 100, certiorari denied (1927) 47 S. Ct. 767, 274 U. S. 756, 71 L. Ed. 1336.

The salaries and wages of State officials and employees were not subject to the income tax imposed by the Revenue Act of 1918. (1919) 31 Op. Atty. Gen. 441.

Compensation paid by state or its subdivisions for legal services, is exempt. Blair v. Matthews (C. C. A. 1928) 29 F.(2d) 892; Howard v. Commissioner of Internal Revenue (C. C. A. 1928) 29 F.(2d) 895. See to the contrary 5 B. T. A. 1047; 10 B. T. A. 62; 7 B. T. A. 1238; 12 B. T. A. 474.

Compensation of architect under appointment as a member of board of supervisors in erection of public and municipal buildings held exempt but compensation fixed by contract with state and municipalities for work not of a permanent or continuous nature held subject to tax. 5 B. T. A. 1135.

Compensation of assistant attorney general of State is not subject to Federal income tax. 22 B. T. A. 581.

Compensation for legal services rendered irrigation districts held to constitute taxable income. 18 B. T. A. 736, petition dismissed (C. C. A. 1931) 53 F.(2d) 1080.

Compensation paid to law firm by municipality held not exempt. 28 B. T. A. 556.

Compensation received by counsel of New York State Commission to Examine Laws Relating to Children, in which capacity he was employee of State of New York, was not subject to Federal income tax. 17 B. T. A. 1261.

Compensation for services rendered certain municipalities held not exempt on ground that taxpayer was neither officer, employee nor administrative agency of State or political subdivision thereof. 9 B. T. A. 708.

Compensation of architect under construction contract with State Hospital held not exempt from tax, he being an independent contractor. 22 B. T. A. 1387.

Where income of the husband is exempt from taxation because derived from services performed for a State government, it retains its exempt status in the hands of his wife entitled under community property laws to one-half. 9 B. T. A. 1180, holding attorney's compensation exempt though case argued after termination of office.

Architect engaged by city held not to have been city officer or employee. 10 B. T. A. 1304.

The salaries and wages of State officials and employees are not subject to the income tax imposed by the Revenue Act of 1918. (1919) 31 Op. Atty. Gen. 441.

Petitioner held an employee of the State and his income from services performed for that State held exempt. 12 B. T. A. 267.

Executors appointed by an Illinois probate court held not exempt from taxation on fees received as being officers of the state. 13 B. T. A. 1362.

Compensation received by the petitioner for professional services rendered as architect for the State Board of Control of Minnesota held not to be exempt from taxation. 14 B. T. A. 605, petition dismissed (C. C. A. 1930) 41 F.(2d) 1002.

Petitioner held to be employee of State of West Virginia and his income from services performed for that State held to be exempt from Federal income tax. 15 B. T. A. 806.

Petitioner during taxable years was independent contractor and not officer or employee of State of New Jersey, or subdivision thereof. 15 B. T. A. 768.

Petitioner held to be neither officer nor employee of political subdivision of State of Texas nor such governmental instrumentality as to render his compensation therefrom for services performed under contract exempt from tax. 16 B. T. A. 1208.

Compensation of employee of political subdivision of State held exempt from tax. 16 B. T. A. 419.

Fee received for sale of trust property, under appointment of Orphans' Court of Philadelphia by virtue of the statutes of Pennsylvania held not exempt. 15 B. T. A. 962.

Where municipal corporation relieved petitioner from local taxes in consideration for services, under evidence Commissioner properly did not include any amount in gross income on account of acts done or services rendered, nor allow deductions on account of taxes of which petitioner was relieved. 16 B. T. A. 604.

In circumstances of case, held, amount received by attorney for professional services rendered under contract with Attorney General of Illinois to conduct certain grand jury investigations in Cook County,

Ill., was not exempt from income tax. 20 B. T. A. 431.

Compensation received as employee of Industrial Accident Commission of Maryland held exempt from income tax. 28 B. T. A. 1109.

Salary of municipal engineer held not exempt. 28 B. T. A. 1213.

Fees of architect for work for city held not exempt. 28 B. T. A. 1217.

See, also, notes to sections 111, 116 and 322 of this title.

IV. PERSONS TO WHOM TAXABLE

101. In general

A ground rent deed, whereby grantee covenanted to pay reserved rent, without any deduction for any taxes, etc., and to pay all taxes levied on yearly rent, must govern in determining which of the parties as between themselves is liable for the tax on income accruing thereunder, the federal law being silent on that subject. *Ehrlich v. Brogan* (1918) 105 A. 511. 262 Pa. 362, affirming (1917) 65 Pa. Super. Ct. 384.

Income in form of renewal commissions of which company acting as insurance company's general agent was "earner" held taxable to such agent, notwithstanding agent assigned renewal commissions and insurance company paid them directly to assignees. *Van Meter v. Commissioner of Internal Revenue* (C. C. A. 1932) 61 F.(2d) 817.

Extra compensation in addition to regular salary held taxable as income to one who earned it. *Saenger v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 69 F.(2d) 631, followed in *Saenger v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 69 F.(2d) 633.

Extra compensation in addition to salary paid by theater corporation to officer held taxable as income of officer, as against contention that he earned compensation in behalf of another corporation and that compensation was therefore taxable to such corporation. *Saenger v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 69 F.(2d) 631, followed in *Saenger v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 69 F.(2d) 633.

Earned incomes are taxed to, and must be paid by, those who earn them, and unearned incomes to those who own property or right that produced them, not to

those to whom their earners or owners are under contract to pay them. *Saenger v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 69 F.(2d) 631, followed in *Saenger v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 69 F.(2d) 633.

Four persons forming a syndicate for the sole purpose of drilling an oil well held tenants in common, not association, for purposes of taxation. *Commissioner of Internal Revenue v. Duckwitz* (C. C. A. 1934) 68 F.(2d) 629.

Company holding lessee's stock and using leased theater held liable for income taxes, assessed against lessee to extent of value of such use exceeding rental paid. *Hatch v. Morosco Holding Co., Inc.* (C. C. A. N. Y. 1931) 50 F.(2d) 138, affirming (D. C. 1929) 34 F.(2d) 579, holding evidence sufficient to show that use was worth amount of tax in excess of rental paid.

Corporation organized solely to hold legal title to realty to facilitate resale during absence of principal trustee of owner, an unincorporated Massachusetts trust, held mere conduit for title, hence profit on sale was taxable to trust, not to corporation, notwithstanding absence of express agreement to hold property as trustee. 112 West 59th Street Corporation v. *Helvering* (1933) 68 F.(2d) 397, 62 App. D. C. 350.

Oil distribution company would be liable for income tax on royalties from lease, even though income was first payable to beneficiaries under trust, where royalties belonged to company after obligations mentioned in trust were liquidated. *Marquette Oil Distribution Co. v. Commissioner of Internal Revenue* (C. C. A. 1934) 73 F.(2d) 205.

On issue whether oil distribution company or trustee who was president of company was owner of oil lease, in determining whether company was liable for income tax on royalties, deed from trustee to company covering lease held sufficiently delivered though never manually delivered and not recorded. *Marquette Oil Distribution Co. v. Commissioner of Internal Revenue* (C. C. A. 1934) 73 F.(2d) 205.

Royalties from oil lease held taxable as income of oil distribution company, as against contention that trustee and not company was owner of lease, where trust agreement and acts of interested parties showed ownership by company; collections by trustee being treated by him as belonging to company. *Marquette Oil*

Distribution Co. v. Commissioner of Internal Revenue (C. C. A. 1934) 73 F.(2d) 205.

Income of residuary estate paid as annuities was not taxable to trustee. 13 B. T. A. 1213.

Profit upon sale by life tenant and remainderman taxable to life tenant where, under will, limitations over were subject to be defeated and income and profits belonged to her during life. 1 B. T. A. 1254.

Contention that part of profit was to enure to third person rejected for want of evidence. 2 B. T. A. 508.

Furniture found not to have been owned by taxpayer and rental not to constitute income to him. 2 B. T. A. 912.

Stock held not to have belonged to taxpayer but to have been sold by him as another's agent. 3 B. T. A. 257.

Profit upon sale of property of estate held not to have been realized by taxpayer in her individual capacity, when included in her account as administratrix and sale made for benefit of estate. 3 B. T. A. 413.

Real estate held not owned by taxpayer and gain upon sale not taxable income to her. 3 B. T. A. 429.

Finding made that moneys received by taxpayer were received by her as a loan to corporation and as treasurer of charitable organization, and were not her personal income. 3 B. T. A. 429.

Where corporation was dissolved pending negotiations for sale of its property and property was transferred to stockholders who consummated sale profit, if any, enured to stockholders. 3 B. T. A. 780.

That corporation avoided tax liability by procedure taken is no justification, for holding that dissolution effected distribution of proceeds of sale rather than of property. 3 B. T. A. 780.

Where partners received salaries from corporation and loaned them to corporation, salaries were taxable to partners as individuals. 4 B. T. A. 916.

Where corporation became insolvent and discontinued business, and stockholders formed partnership which carried on similar business, under same name income held taxable to partners and not to corporation. 4 B. T. A. 950.

Where cemetery association created trust fund for perpetual care, interest **o**

fund held income to trustee and not to association. 4 B. T. A. 1169.

Where corporation was organized to take over hotel operated by a partnership, but never issued any stock and did not acquire the hotel gains or losses were those of the partnership. 5 B. T. A. 314.

Where lessor causes to be incorporated in lease direction that rents and royalties be paid to third persons amounts paid are income of lessor. 5 B. T. A. 413.

Evidence held insufficient to prove that moneys were received by widow in fiduciary capacity. 6 B. T. A. 114.

Income accrued to life beneficiary at date of her death and paid to her executor, held not taxable to succeeding beneficiary. 6 B. T. A. 426.

Entire profit from sale included in income where testimony did not support claim that taxpayer owned only a half interest 6 B. T. A. 761.

Income from sales held not taxable to corporation, when sales were by syndicate to which it loaned money. 6 B. T. A. 949.

Fees and commissions earned by officers of a national bank, as agents for insurance companies are not income of the bank. 7 B. T. A. 84, 94.

Income held that of petitioner. 8 B. T. A. 375.

Petitioner held to have been purchaser of certain stock as principal and not an agent. 9 B. T. A. 398.

Income derived from business and other property from July 1, when owner closed books to August 22, 1919, when he contracted to sell to corporation organized by him was the income of such owner. Held, further, that the net income for the 6-month period from July 1, to December 31, 1919, may be allocated to such owner on the basis of the proportion of 52/184. 10 B. T. A. 712.

Evidence held not to show another's part ownership of royalties taxed to petitioner. 10 B. T. A. 868.

Inclusion in income of profit from short sales of sugar sustained for lack of evidence that such transactions were not carried out in taxpayer's individual capacity. 10 B. T. A. 1268.

Royalties paid to petitioner's mother and wife held income of petitioner. 11 B. T. A. 743.

Portion of profits of business payable to taxpayers' sisters in accordance with their father's will held not taxable income. 11 B. T. A. 789.

Petitioner held not entitled to exclude from income sums paid his mother under an alleged partnership agreement. 11 B. T. A. 743.

Where an individual owner incorporated business on April 24, 1917, and corporation filed return for fiscal year ended January 31, 1918, Commissioner properly prorated earnings and allocated earnings from February 1, 1917, to April 24, 1917, to the individual. 11 B. T. A. 1309.

Petitioner and his children held partners in operation and management of theatres, and only distributive share of partnership profits included in petitioner's income. 12 B. T. A. 164.

Instrument held an assignment of profits and assignor and not assignee taxable thereon. 12 B. T. A. 565.

Corporation having received and retained gain from transaction of its president cannot deny that it received taxable income from that source. 12 B. T. A. 855.

Where stockholder became owner of all except two qualifying shares of capital stock, but corporate entity was maintained to avoid personal liability and business was conducted substantially as before income of business held that of the corporation. 12 B. T. A. 1052.

Partnership held to exist between father and sons in connection with farms and income from sale of the oil royalty interests accrued to them in equal shares. 12 B. T. A. 1232.

See, also, 12 B. T. A. 865.

Where real property, situated in New York, is conveyed to one person for the benefit of another, the legal and equitable title vests in the latter under the laws of the State. No part of the rents or profits from the sale of such property is income to the person in whose name the property is held. 20 B. T. A. 537.

Where petitioner assigned shares in profits from purchase and sale of corporate shares, but assignment did not carry with it ownership of stock, amounts of gains realized from liquidation of assets were taxable to petitioner. 22 B. T. A. 935.

Commissions on renewal insurance premiums paid to assignee of insurance agent

held taxable to assignor. 22 B. T. A. 1386.

Income upon shares of stock held in trust by petitioner for minor son held not taxable to her. 23 B. T. A. 554.

Commissioner may not raise statute of frauds to invalidate an oral agreement relating to real property, and thereby charge profits arising therefrom to the party not entitled to them under the agreement. 21 B. T. A. 962.

Optionor who consented to sale of option in consideration of agreement by holder to divide purchase price with third parties realized no income from the sale of the option. 13 B. T. A. 201, 223.

Profits on the purchase and sale of ships held not income to petitioner, which had no part in transaction. 13 B. T. A. 958.

Bank deposits in trustee's account, representing amounts realized from sale of trust property, held not income to trustee as an individual. 13 B. T. A. 240.

Income from securities held in trust such income being periodically distributed, held not taxable to grantor. 13 B. T. A. 1383.

A joint adventure is not a taxable entity under the former Revenue Act of 1918 and the members thereof derive income therefrom in the year in which the income is realized by the joint adventure. 14 B. T. A. 1295.

Committee appointed to manage affairs of incompetent, although required to make return of income, is not taxpayer. Tax is imposed upon incompetent. Lieberman's Committee v. Commissioner of Internal Revenue (C. C. A. 1931) 54 F.(2d) 527, rev on other grounds 20 B. T. A. 313.

Rent payable to stockholders of lessor held taxable to lessor. 26 B. T. A. 914.

Profits held taxable to shareholders rather than nominal non-active corporation. 25 B. T. A. 1135.

Profits of sale held taxable to corporation, not to stockholders. S. A. McQueen Co. v. Commissioner of Internal Revenue (C. C. A. 1933) 67 F.(2d) 857, aff 26 B. T. A. 1337.

Income of brokerage accounts operated in names of minor children held taxable to father. 27 B. T. A. 1158.

Where a taxpayer trading on margin in the case of each sale, ordered broker to

sell shares purchased on certain date, and broker sold number of shares specified, held, that orders to broker could be given no force as an identification of the stock sold so as to render article 30, Regulations 65 inapplicable in determination of his taxable income, since shares were never specifically owned or possessed. 21 B. T. A. 561.

Article 39, Regulations 65, prescribing the method of computing gain on sales of stock made from lots purchased at different dates and at different prices, where identity of the lots cannot be determined, is reasonable and within the full scope of the administrative regulations contemplated by the statute. 21 B. T. A. 561.

102. Effect of gift or transfer of property or interest

Where assignor of future income from property remains the owner thereof, the income therefrom is taxable to him. Bing v. Bowers (D. C. N. Y. 1927) 22 F.(2d) 450, affirmed (C. C. A. 1928) 26 F.(2d) 1017.

Income from property owner of which had assigned sums payable from net income, retaining control thereof, held taxable to owner. Bing v. Bowers (D. C. N. Y. 1927) 22 F.(2d) 450, affirmed (C. C. A. 1928) 26 F.(2d) 1017.

Granting clause of instrument creating annuity payable from rents, income, and profits held not to pass interest, or create rent charge, precluding taxation of interest to grantor. Bing v. Bowers (D. C. N. Y. 1927) 22 F.(2d) 450, affirmed (C. C. A. 1928) 26 F.(2d) 1017.

Parties purchasing opposing litigant's claimed interest in land held not liable for income tax on oil royalties paid vendor as purchase price. Looney v. U. S. (D. C. La. 1928) 26 F.(2d) 481.

Act imposing tax on salaries, etc., taxes them as income to persons earning them, regardless of anticipatory contracts designed to prevent vesting thereof in such persons. Parker v. Routahn (C. C. A. Ohio 1932) 56 F.(2d) 730, cert den (1932) 53 S. Ct. 15, 287 U. S. 606, 77 L. Ed. 527.

Seller of business is liable for tax on profits to time of transfer despite contract with buyer to pay. Rouss v. Bowers (C. C. A. N. Y. 1929) 30 F.(2d) 628, certiorari denied (1929) 49 S. Ct. 348, 279 U. S. 853, 73 L. Ed. 995.

Gift of stock, relieving donor from tax on profit therefrom held shown. Edison v. Lucas (C. C. A. 1930) 40 F.(2d) 398.

Where timber owner assigned to corporation in which he was sole stockholder profit-sharing contract with another corporation for cutting and selling timber, income payable under such contract held taxable to assignee corporation, not to timber owner. *Edward G. Swartz, Inc. v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 60 F.(2d) 633.

Corporation, as assignee of profit-sharing contract relating to cutting of timber owned by assignee's sole stockholder, and such stockholder, by returning income received under contract as that of assignee corporation, were estopped from claiming contrary after limitation had run against taxing income to stockholder. *Edward G. Swartz, Inc. v. Commissioner of Internal Revenue* (C. C. A. La. 1934) 60 F.(2d) 633.

Tax liability cannot be modified by contract to pay share of partnership profits to third person, so as to exclude any part of such share from individual net income. 1 B. T. A. 143, 150.

Commissions earned by corporation under agency contracts, but paid direct to specified distributees in accordance with assignment contracts in which corporation and all of stockholders joined, held taxable income to corporation in years paid. Held, further, that stockholders sharing in distribution of income, were liable respectively for unpaid tax of corporation, to extent of portion of such income received by each. 22 B. T. A. 1202.

Taxpayer held not to have made bona fide gift of stock from which income derived but to own same. 2 B. T. A. 77.

Assignee held beneficial owner of contract to purchase real estate, and to have realized gain upon subsequent sale. 2 B. T. A. 788.

Net profits from sale of property transferred to corporation by joint venturers held not to belong to corporation but taxable income of joint venturers. 2 B. T. A. 851; 4 B. T. A. 605.

Transfers of stock held bona fide gifts. 3 B. T. A. 301, 302; 9 B. T. A. 24.

Transfer of assets of business to taxpayer held an absolute sale and profits were taxable income of taxpayer. 3 B. T. A. 403.

Where individual organized corporation and transferred his business to it, such proportion of entire year's profits allocated to him as number of days of operation

as an individual bore to total number of days in year. 4 B. T. A. 516.

That business was sold as of beginning of taxable year did not relieve individual from liability for tax on profits earned prior to incorporation. 4 B. T. A. 516.

Parol grant of land, accompanied by delivery of possession, held a valid transfer of title, and grantor, upon subsequent sale of timber not taxable upon gain derived. 4 B. T. A. 619.

Share of profit from joint venture is income to venturer though assigned to another immediately upon receipt. 5 B. T. A. 616.

Where stockholder executed valid declaration of trust under which he held property for benefit of children, income not taxable as his income. 5 B. T. A. 963; 8 B. T. A. 759.

Statement by taxpayer to trustee for joint venturers, that he had made a gift of part of his interest, insufficient to establish gift. 6 B. T. A. 250.

Gain upon the sale of stock transferred to name of children, held taxable to petitioner. 7 B. T. A. 1244.

Where sole stockholder took over business during year, income for balance of year taxable to him and not to corporation. 8 B. T. A. 65.

Stockholder taking over business not relieved from tax because corporation improperly included subsequent income in its return. 8 B. T. A. 65.

Where owner, of right to receive royalties unconditionally assigned undivided interests therein to his children, the income resulting from such production held not taxable to the assignor. 10 B. T. A. 732.

Petitioner held not taxable upon gain from the sale to her daughter of certain shares of stock alleged to have been previously conveyed as a gift to her daughter. *Edson v. Lucas* (C. C. A. 1930) 40 F.(2d) 398, rev 11 B. T. A. 621.

Where taxpayer made an oral gift of land to his son, but before he entered into possession the tract was sold, taxpayer was owner under laws of Nebraska and profit was properly included in his gross income. But where he made oral gift of land to children and after making contract of sale, deeded land to children to whom payments on the purchase price were made, the children were held the

owners and taxpayer realized no taxable gain from the transactions. 11 B. T. A. 651.

Where taxpayer gave dividends on stocks, etc., to charitable organization, but at all times retained ownership and possession of stocks, bonds, notes and real estate from which the income assigned was derived income held taxable to him. 12 B. T. A. 350.

That a short time before sale of stock, seller told certain individuals that they should have all that he realized from the sale of the stock over and above \$250 a share, did not limit amount of profit taxable to him. 12 B. T. A. 438.

Petitioner, having life interest in coal royalties as residuary legatee, made assignment in respect of such royalties to children. Held that such royalties paid to children were income to petitioner. 17 B. T. A. 303.

Where mother makes valid transfer of leasehold interests in her land to her daughters and daughters later sell such interests, income resulting from such sales is not taxable to her. 22 B. T. A. 1245.

Petitioner held to have created parol trust for son and daughter with respect to portion of stock appearing of record in his name, and two-thirds of dividends from such stock should be excluded from his gross income. 24 B. T. A. 52.

In 1921 the petitioners sold certain property which was owned by a member of the firm. Payments for property were made to the latter. Held, that any profit realized upon the sale was taxable income of such person. 14 B. T. A. 609.

Dividend held taxable to one who had transferred stock. 26 B. T. A. 909.

Agreement not to place income in trust. 25 B. T. A. 1201.

Assignment of future profits does not relieve assignor from liability to tax. 25 B. T. A. 1195.

Transfer of reserved interest in lands held to cast tax on income thereof on transferee. 27 B. T. A. 33.

Release of right to certain prospective dividends held not assignment relieving from tax thereon. 27 B. T. A. 1308.

Where corporation, after contracting to sell its leasehold, assigned it to its two stockholders who consummated sale and received proceeds, profits from sale held taxable to corporation. 28 B. T. A. 467.

Assignment by petitioner to its stockholders of right to receive proceeds from insurance policies on vessel which had sunk did not constitute distribution of vessel in kind, and such proceeds, to extent that they exceeded depreciated cost of vessel, constituted taxable income to petitioner. 18 B. T. A. 654.

103. Husband or wife—In general

Husband held not subject to income tax on entire profits of a business, part of which was owned and the profits received by his wife. *Hamilton v. Commissioner of Internal Revenue* (C. C. A. 1928) 24 F.(2d) 668. To the same effect, see 6 B. T. A. 1123; 9 B. T. A. 547, 834; 10 B. T. A. 1234.

Title of wife to land could be attacked by government to hold husband as legal owner for income taxation of profits. *Leydig v. Commissioner of Internal Revenue* (C. C. A. 1930) 43 F.(2d) 494.

Husband conducting partnership in Oregon must return full share of partnership income, though wife owned half of funds contributed by husband to partnership. *Larsen v. Burnet* (1930) 50 F.(2d) 308, 60 App. D. C. 158.

Attorney's entire income from services held taxable to him notwithstanding trust agreement providing that half of such income should become wife's property. *Luce v. Burnet* (1932) 55 F.(2d) 751, 60 App. D. C. 393.

Although husband and wife had agreed that any property acquired by either should be held by them as joint tenants, husband could be taxed for income tax on whole of salary and attorney's fees earned by him. *Lucas v. Earl* (1930) 50 S. Ct. 241, 281 U. S. 111, 74 L. Ed. 731, reversing (C. C. A. 1929) 30 F.(2d) 898.

Where, after wife's assignment to husband of part of income from trust, both parties directed trustees to pay income to bank for deposit to joint account of husband and wife, entire trust income was taxable to wife. *Power v. Commissioner of Internal Revenue* (C. C. A. 1932) 61 F.(2d) 625, cert den (1933) 53 S. Ct. 404, 288 U. S. 612, 77 L. Ed. 986.

Wife's equitable ownership of partnership interest standing in name of husband by reason of agreement to transfer property did not relieve husband from liability for tax on share of partnership's net income. *Battleson v. Commissioner of Internal Revenue* (C. C. A. 1932) 62 F.(2d) 125, aff 22 B. T. A. 455.

Interest paid to payee on notes held part of his gross income, though deposited in joint account in name of payee and his wife and included by latter in her separate return. 2 B. T. A. 172.

Gain from sale of real estate conveyed to taxpayer's wife and purchased with funds contributed by her held not income to husband. 2 B. T. A. 1300.

While under laws of Michigan, marriage of partners may dissolve partnership, it does not divest wife of her interest in assets or income and where business is continued husband and wife are joint venturers and wife's share of income is not taxable to husband. 6 B. T. A. 541, 1232.

Only one-half of interest paid on note payable to husband and wife is income to wife. 7 B. T. A. 465.

Property on which oil and gas leases given held property of husband. 7 B. T. A. 560.

Salary paid wife by husband for services rendered him in his business, held improperly included in the husband's income. 8 B. T. A. 979.

As to effect of agreement that future acquired property be held in joint ownership, see 10 B. T. A. 1377.

Income from securities deposited by husband under separate maintenance agreement held taxable to husband though depositary was authorized to use principal on husband's default. 12 B. T. A. 800.

Parol agreement as to ownership by a wife of stock in name of the husband, supported by action of parties in reporting income, accepted as proof of ownership. 12 B. T. A. 1306.

Petitioner and his wife held joint venturers and respondent held to have erred in including wife's share of profits in petitioner's income. 22 B. T. A. 887.

Assignment of future income by wife to husband held under facts not to divest her of liability for payment of tax thereon. 23 B. T. A. 428.

Profits from separate property of wife turned over to husband for management held not taxable to him. 24 B. T. A. 1144.

Value of Missouri real estate owned by decedent and his wife as tenants by entirety must be included in the gross estate, even though estates were created prior to September 8, 1916. 21 B. T. A. 1347.

Where property was purchased with funds owned jointly by husband and wife, held that income from such property was income of the husband only to extent of his ratable interest in the investment. 18 B. T. A. 434.

Deed to husband and wife held to create estate by entirety and income from such estate held properly taxable to the husband. 18 B. T. A. 768.

Where husband and wife made oral agreement in 1919 relative to their property rights and on December 31, 1923, entered into a written agreement relative thereto, written agreement could not be considered as being in effect during 1922. 17 B. T. A. 1330.

Where the income of surviving husband has been included in that of his deceased wife's estate, upon a recomputation of deficiency due from wife's estate there should be excluded therefrom income attributable to him, and only income of her estate should be included. 17 B. T. A. 704.

Where, before husband's death, husband and wife contracted to sell property acquired as tenants by entirety, only one-half of profit was taxable income to wife. 18 B. T. A. 91.

Income from property held the income of the husband and wife in proportion to their ratable contributions to the principal amount thereof. 13 B. T. A. 1096.

Income of residents of California, from separate estates and individual earnings is taxable to spouse owning the estate or earning the income, irrespective of antenuptial agreement. 13 B. T. A. 508.

Where on February 21, 1921, petitioner assigned portions of right to income from trust, first payment in 1921 of \$2,250 made from funds accumulated prior to assignments, held income to petitioner in 1921. 13 B. T. A. 1315.

Where husband and wife domiciled in California had joint bank account and husband had drawn funds from this account and purchased property in his own name, income from such property was taxable to husband. 20 B. T. A. 11.

Antenuptial agreement, entered into in Alsace-Lorraine in 1903 between petitioner and his wife, that property acquired (including earnings of either) should be conclusively considered as jointly held, did not entitle each of them after becoming residents of New York to return one-half of the salary earned by the husband. *Blumenthal v. Commissioner of Internal*

Revenue (C. C. A. 1932) 60 F.(2d) 715, aff 15 B. T. A. 1394.

Under laws of Michigan, where husband receives income from real estate owned by husband and wife as tenants by entirety, held that entire income belongs to the husband. 20 B. T. A. 136.

Gift of property to wife held to make income taxable to her. Tracy v. Commissioner of Internal Revenue (C. C. A. 1934) 70 F.(2d) 93, rev 25 B. T. A. 1055.

Wife held to be taxable for part of income of business. 25 B. T. A. 986.

Profits from sales apportioned between husband and wife. 25 B. T. A. 1246.

Income from stock held to be equally divided between husband and wife. 27 B. T. A. 1068.

Dividends held income of wife. 27 B. T. A. 565.

Husband held taxable with all income of property held by entireties. 27 B. T. A. 986.

Under Maryland law husband held taxable on one-half of earnings of property held by entireties. 27 B. T. A. 744.

Agreement to pay wife certain sum out of certain future payments to husband does not prevent all of such payments from being his income. 28 B. T. A. 1234.

Post nuptial contract held not to cover earnings of either spouse from other than joint or common employment. 28 B. T. A. 767.

Only one half of proceeds of sale of real estate held by entireties should have been included in husband's gross income, in view of state statute. 27 B. T. A. 528.

104. — Community or separate profits

Under Revenue Act Feb. 24, 1919, § 210, 211 (repealed), income of community property of persons living in California may be taxed wholly against husband, regardless of whether wife has a genuine interest or a mere expectancy. U. S. v. Robbins (Cal. 1926) 46 S. Ct. 148, 269 U. S. 315, 70 L. Ed. 285, reversing (D. C. 1925) 5 F.(2d) 690. To the same effect, see Blair v. Roth (C. C. A. 1927) 22 F.(2d) 932, certiorari denied (1927) 48 S. Ct. 436, 277 U. S. 588, 72 L. Ed. 1001; 4 B. T. A. 682; 5 B. T. A. 593, 597, 668; 6 B. T. A. 1084; 7 B. T. A. 114, 882; 22 B. T. A. 349; 15 B. T. A. 348. And in the absence of agreement to the contrary earnings of both husband and wife are com-

munity property and taxable to the husband. 11 B. T. A. 1204.

Entire tax on spouses' aggregate earnings for services rendered in California held chargeable to husband, notwithstanding antenuptial agreement to divide earnings equally. Belcher v. Lucas (C. C. A. 1930) 39 F.(2d) 74, aff 27 B. T. A. 1194.

See to the same effect 17 B. T. A. 1330.

So waiver by husband to wife of one-half of his future earnings held not to make the same returnable by her. Wehe v. McLaughlin (C. C. A. Cal. 1929) 30 F.(2d) 217.

Whether husband's will devising entire community estate and wife's waiver constituted binding contract or whether power of election remained in widow to take either in pursuance of will or in accordance with community rights, husband's estate was liable for tax on entire property. Title Insurance & Trust Co. v. Goodcell (C. C. A. Cal. 1932) 60 F.(2d) 803, cert den (1933) 53 S. Ct. 404, 288 U. S. 613, 77 L. Ed. 986.

Where community property was acquired prior to 1927 amendment to California statute relating to respective interests of husband and wife, entire income from community property held taxable to husband. Hirsch v. U. S. (C. C. A. Cal. 1932) 62 F.(2d) 128, cert den (1933) 53 S. Ct. 595, 289 U. S. 735, 77 L. Ed. 1483.

Earnings of wife, residing with husband in California, after their agreement that such earnings should remain her separate property, should not be taxed as husband's income by federal government. Helvering v. Hickman (C. C. A. 1934) 70 F.(2d) 985, aff 27 B. T. A. 807.

That resident of California owns an interest in a partnership in Washington, a community property state, does not prove that income will be community income when received. 7 B. T. A. 820.

Where husband and wife, residents of California, agreed to divide profits from investments equally, but that each should be entitled to receive as separate property compensation for services, the profits and compensation received by the wife should not be included in the husband's taxable income. 10 B. T. A. 1096. To substantially the same effect, see 10 B. T. A. 1233, 1345, 1374.

Property purchased by man and woman who subsequently married was not community property under the California law. 13 B. T. A. 383.

Profits held taxable under California law as it stood prior to 1927 Amendment. 27 B. T. A. 798.

Sum received by husband for services held not community property prior to 1927 change in California law. 29 B. T. A. 1261.

Where the community property doctrine obtains wife has equal interest in community income entitling her to treat half thereof as hers, and file separate return therefor. *Goodell v. Koch* (Ariz. 1930) 51 S. Ct. 62, 282 U. S. 118, 75 L. Ed. 247; *Bender v. Pfaff* (La. 1930) 51 S. Ct. 64, 282 U. S. 127, 75 L. Ed. 247, aff. (C. C. A. 1930) 38 F.(2d) 649, which aff. (D. C. 1929) 38 F.(2d) 642; *Hopkins v. Bacon* (Tex. 1930) 51 S. Ct. 62, 282 U. S. 122, 75 L. Ed. 249, aff. (C. C. A. 1930) 38 F.(2d) 651, which aff. (D. C. 1928) 27 F.(2d) 140; *Poe v. Seaborn* (Wash. 1930) 51 S. Ct. 58, 282 U. S. 101, 75 L. Ed. 239, aff. (D. C. 1929) 32 F.(2d) 916; 13 B. T. A. 1081.

In states having community statutes vesting property and income in husband and wife equally husband need not return and pay tax on entire community income but the wife should separately report and pay a tax on one-half thereof. *U. S. v. Malcolm* (Cal. 1931) 51 S. Ct. 184, 282 U. S. 792, 75 L. Ed. 714.

In Washington, Arizona, Idaho, New Mexico, Louisiana, and Nevada the husband and wife domiciled therein may each report as gross income one-half of the income which under the laws of the respective states becomes, simultaneously with its receipt, community property; this applies under income-tax acts prior to the Revenue Act of 1918. (1921) 32 Op. Atty. Gen. 435.

Money paid to husband after marriage under contract assigning interest in oil and gas lease, executed before marriage, held not part of community for income tax purposes. *Merren v. Commissioner of Internal Revenue* (C. C. A. La. 1931) 51 F. (2d) 44.

Instrument whereby husband in Louisiana gave wife undivided one-half of his undivided one-half interest in oil and gas lease, did not divest husband of all interest in lease, but gave wife for separate use one-fourth interest, and left remaining one-fourth in community. 24 B. T. A. 438.

Provision allowing single spouse to return community income held not to alter right to make separate returns, in states where wife has vested interest in community property. *Poe v. Seaborn* (Wash.

1930) 51 S. Ct. 58, 282 U. S. 101, 75 L. Ed. 239, aff. (D. C. 1929) 32 F.(2d) 916.

Differences of state law, which may bring a person within or without the category designated by Congress as taxable, may not be read into the Revenue Act to spell out a lack of uniformity. *Poe v. Seaborn* (Wash. 1930) 51 S. Ct. 58, 282 U. S. 101, 75 L. Ed. 239, aff. (D. C. 1929) 32 F.(2d) 916.

Antenuptial agreement made in Alsace-Lorraine, where community property system then prevailed, providing that earnings of either spouse should constitute community property, did not vest in wife interest in husband's earnings in New York, making only one-half thereof taxable to husband. *Blumenthal v. Commissioner of Internal Revenue* (C. C. A. 1932) 60 F.(2d) 715, aff. 15 B. T. A. 1394, cert. den. (1932) 53 S. Ct. 220, 287 U. S. 662, 77 L. Ed. 571.

Real estate acquired in Washington by resident before marriage remains his separate property after marriage. Building erected on husband's separate property out of commingled separate and community funds is community property. Income from property after erection of building should be apportioned to husband and community. 22 B. T. A. 337.

Where land inherited by wife in Louisiana was administered by husband and in taxable year oil royalties pertaining to said land were sold, held that profit from such sale was separate property of wife and not community income, pursuant to Louisiana statutes. 24 B. T. A. 30.

Property in name of husband held to be community property. 24 B. T. A. 1144.

Where husband and wife living in State of Washington filed separate returns, and husband reported major part of community income, held, deficiency should be computed by including in petitioner's gross income only his one-half of community income. 21 B. T. A. 1380.

Held, on the evidence, that a certain trading account carried with a brokerage firm in 1924 under the designation "Milton A. Holmes No. 3" was the separate property of the petitioner's wife, and the income therefrom for said year is therefore not taxable to the petitioner. 21 B. T. A. 584.

Taxpayer held not resident of Washington with reference to duty to file return under Community property system. 27 B. T. A. 879.

Income from share in profits of patent assigned to wife by employee, who acquired such right under contract whereby, for share of profits, he transferred patent to employer, held taxable only to wife. *Nelson v. Ferguson* (C. C. A. N. J. 1932) 56 F.(2d) 121, cert den (1932) 52 S. Ct. 646, 286 U. S. 563, 76 L. Ed. 1297.

Proceeds received by husband from sale of royalty oil delivered by lessee on husband's separate property in Texas held husband's separate income, not community income, as regards tax. *Chesson v. Commissioner of Internal Revenue* (C. C. A. 1932) 57 F.(2d) 141, den petition 22 B. T. A. 818.

Half of attorney's fee, received after his wife's death, under contingent fee contract made during marriage, was properly excluded from his net taxable income for year in which received. *Commissioner of Internal Revenue v. King* (C. C. A. Tex. 1934) 69 F.(2d) 639.

Where wife residing with husband in Texas received by will income from property for life, such income held community income, and husband and wife could properly make separate income tax returns each including one-half of income. *Commissioner of Internal Revenue v. Terry* (C. C. A. Tex. 1934) 69 F.(2d) 909.

Earnings of husband and wife domiciled in Texas are community income, and husband and wife may each report as gross income one-half of the total earnings. (1920) 32 Op. Atty. Gen. 298.

Determination that income of resident of Arizona from interest in Georgia and Massachusetts partnerships was separate income, approved. 9 B. T. A. 1053.

Where no returns were filed by petitioner and his wife, residents of Texas, for 1923 or 1924, but joint returns were filed on their behalf by the Commissioner under the authority of section 97 of this title, petitioner may not now return his income and have his tax computed for these years on a separate basis. 14 B. T. A. 465.

Joint returns of community income of petitioner and his wife, residents of Texas, having been filed for the years 1920, 1921, and 1922, the petitioner may not now have the income divided between them and taxed separately. 14 B. T. A. 465.

Farm rentals received in year 1920 from real estate situated in State of Texas which was separate estate of husband,

constitute community income under laws of Texas. 16 B. T. A. 614.

Oil royalties received in year 1920 from real estate situated in State of Oklahoma which was separate estate of husband living in Texas, constitute separate income of husband. 16 B. T. A. 614.

Agreement of spouses as to disposal of their earnings held not to prevent wife's earnings from being "community income," taxable to husband. *Blair v. Roth* (C. C. A. 1927) 22 F.(2d) 932, certiorari denied (1927) 48 S. Ct. 436, 277 U. S. 588, 72 L. Ed. 1001.

Agreement between partner and his wife, acknowledging latter's equal partnership in husband's interest, did not make her member of partnership. *Burnet v. Leininger* (1932) 52 S. Ct. 345, 285 U. S. 136, 76 L. Ed. 665, reversing (C. C. A. 1931) 51 F. (2d) 7.

Cash payments to husband for oil and gas leases on his separate property did not for tax purposes fall into community as "rents and revenues." *Ferguson v. Commissioner of Internal Revenue* (C. C. A. 1930) 45 F.(2d) 573.

Consideration received by wife on sale of mineral interest in land held separate, not community property. *Lucus v. Baucum* (C. C. A. 1931) 50 F.(2d) 806, reversing 17 B. T. A. 1312.

In determining whether income was community property for taxation purposes, that husband deposited income in joint account from which original funds were withdrawn to invest in the property producing income in question held immaterial. *Pedder v. Commissioner of Internal Revenue* (C. C. A. 1932) 60 F.(2d) 866.

Board's finding that income from property held in husband's name was community property and hence taxable to husband, not property held in joint tenancy, held supported, though funds invested in the property were once deposited in joint bank account. *Pedder v. Commissioner of Internal Revenue* (C. C. A. 1932) 60 F. (2d) 866.

Wife's rights in husband's income were determined by law of domicile where earned, not by law of matrimonial domicile. *Blumenthal v. Commissioner of Internal Revenue* (C. C. A. 1932) 60 F.(2d) 715, cert den (1932) 53 S. Ct. 220, 287 U. S. 662, 77 L. Ed. 571.

Property purchased by husband before marriage held separate property though fiancée contributed to price and major improvements were later paid for from community funds. Commissioner of Internal Revenue v. Burke (C. C. A. 1932) 62 F.(2d) 7.

Where business income is produced in part by separate property and in part by efforts of community, earnings will be allocated, but if income attributable primarily to one element, other element disregarded. 2 B. T. A. 640.

Where services of community incidental to profits, there is no presumption that profits attributable entirely to services of community. 2 B. T. A. 640.

Where any presumption that profits attributable to community services is overcome by evidence, if there be any presumption it is that separate property was primary source of profits. 2 B. T. A. 640.

Where property purchased in part with separate funds of wife and in part with joint funds and title taken in wife's name, profit on sale was not income to husband. 3 B. T. A. 313.

Earnings of a wife during coverture which are her separate property may not be included in taxable income of husband. 4 B. T. A. 679, 832, 833, 834, 915, 1071, 1073, 1074, 1075.

Existence of agreement that wife's separate earnings shall be her separate property may be proved by circumstantial evidence. 4 B. T. A. 1071.

Inclusion in husband's income of wife's earnings not disturbed in absence of evidence that such earnings were separate property. 4 B. T. A. 1074, 1203.

So held with regard to salary paid wife by husband. 4 B. T. A. 1109.

Evidence held insufficient to overcome presumption that securities were community property. 4 B. T. A. 1149.

Where husband invests wife's separate property in a partnership, wife's pro rata share of gain derived from sale of interest in partnership is not taxable to husband. 6 B. T. A. 312.

Property held wife's separate property and profit realized her separate income. 8 B. T. A. 213.

Failure to determine tax liability on community-property basis approved. 8 B. T. A. 1121.

Profit on sale of land determined and apportioned between husband and wife. 9 B. T. A. 1222.

Where income was derived principally from business carried on in a noncommunity-property state, and Commissioner determined that none of it was community income, husband was not entitled to divide certain income between himself and wife and exclude from his return the portion allocated to the wife. Rosenberg v. Commissioner of Internal Revenue (App. D. C. 1930) 37 F.(2d) 880, aff 10 B. T. A. 601.

Where income from business produced in part by separate property and in part by efforts of community, value placed upon services by parties accepted as a reasonable apportionment. 11 B. T. A. 26.

Husband, having received community income, was taxable with the same though divorce decree transferred a portion of it to his wife. 11 B. T. A. 441.

Oil royalties paid on land acquired by husband for consideration consisting of community property held to be taxable to him and not to community. 24 B. T. A. 715.

Agreement between husband and wife, providing that all their property and all income arising therefrom or from compensation for personal services of either should become separate property and that each should own an undivided one-half interest therein construed. 22 B. T. A. 587.

Under evidence, commissioner properly included entire income from certain property in petitioner's return where petitioner had previously shown for other tax purposes that property was her separate property and no evidence was introduced before Board of Tax Appeals regarding ownership. 21 B. T. A. 384.

Money and stock received by petitioner during marriage in payment for property sold by him before marriage, held not community property. 18 B. T. A. 156.

Where the two petitioners and their wives carried on a mercantile business as a partnership, the income derived by the wives was their separate property and it was error to include same in the income of petitioners as community property. 13 B. T. A. 981.

Where wife furnished \$5,000 from her separate estate to enable husband to engage in moving picture production, the profits to be divided equally, one-half of the proceeds was the wife's separate prop-

erty and should not be included in husband's income. 13 B. T. A. 977.

Where husband reported all community income in addition to income on his separate property, Commissioner could not include in wife's return one-half of community income. 14 B. T. A. 723.

Entire value of community property included in gross estate of husband. 16 B. T. A. 936.

Where citizens of the United States reside in a foreign country, the laws of which give to a wife a vested interest in community property, separate returns are proper, and respondent may not tax entire income to husband. 13 B. T. A. 375.

Earned income of husband in community property state held not earned income of wife. 26 B. T. A. 642.

Income reserved by wife as beneficiary of trust held community property. 26 B. T. A. 1418.

Attorney fee held community property. 26 B. T. A. 1158.

Community property laws held not to attach to property of nonresident. 27 B. T. A. 1234.

Income from property during stated years held taxable in entirety to husband as community property. 28 B. T. A. 179.

Entire profits from sale of property held taxable income of husband's estate. 28 B. T. A. 716.

Agreement between spouses held to work partition of community. 30 B. T. A. 1136.

Removal of taxpayer into community property state held not to change accrued separate right into community. 30 B. T. A. 425.

An agreement which merely provides for the transfer of property from one spouse to the other upon separation does not destroy the marital community composed of the parties thereto. 29 B. T. A. 616.

By contract between spouses earnings of husband may be withheld from community. 29 B. T. A. 760.

Antenuptial agreement in foreign country held to prevent earnings of husband from becoming community property. 29 B. T. A. 167.

Cash surrender value of insurance policy payable to wife falls into community and is taxable one-half to each spouse. 29 B. T. A. 11.

Change of domicile to community property state does not affect status of interest in partnership in another state previously acquired. 30 B. T. A. 1265.

Income of married woman from trust fund held community property of herself and husband. 30 B. T. A. 852.

Probate proceedings held to have worked partition of community property. 30 B. T. A. 619.

Separation agreement held to prevent any income after its becoming community property. 30 B. T. A. 516.

105. — Gifts and transfers by husband to wife

Assignment by husband to wife of interest in property made during negotiations for sale to third person, held a bona fide gift and subsequent sale by wife did not result in taxable income to husband. 2 B. T. A. 1012. To substantially same effect, see 3 B. T. A. 964, 969, 974; 6 B. T. A. 788, 1142.

Oral understanding giving wife half interest in farm held insufficient to establish wife's right to royalties from future oil leases or relieve husband from tax on entire income. *Leydig v. Commissioner of Internal Revenue* (C. C. A. 1930) 43 F.(2d) 494.

Assignment to wife of payments becoming payable periodically to husband are not effective for tax purposes. *Bishop v. Commissioner of Internal Revenue* (C. C. A. 1931) 54 F.(2d) 298, aff 19 B. T. A. 1108.

Undivided interest in contract for commission on insurance renewals assigned to wife held not taxable as income of husband. *Hall v. Burnet* (1931) 54 F.(2d) 443, 60 App. D. C. 332, cert den (1932) 52 S. Ct. 408, 285 U. S. 532, 76 L. Ed. 942.

Dividends from shares of stock of husband indorsed in blank and placed in wife's safe deposit box held properly included in husband's return. *Marshall v. Commissioner of Internal Revenue* (C. C. A. 1932) 57 F.(2d) 633, cert den (1932) 53 S. Ct. 20, 287 U. S. 621, 77 L. Ed. 539.

Insurance agent's assignment to his wife of his right to future bonuses and commissions held ineffective to avoid taxation thereof as his income. *Parker v. Rutzahn* (C. C. A. Ohio 1932) 56 F.(2d) 730, cert den (1932) 53 S. Ct. 15, 287 U. S. 606, 77 L. Ed. 527.

Transfer of stock on books of corporation itself constitutes delivery. *Marshall*

v. Commissioner of Internal Revenue (C. C. A. 1932) 57 F.(2d) 633, cert den (1932) 63 S. Ct. 20, 237 U. S. 621, 77 L. Ed. 539.

Dividends on shares of stock transferred from husband to wife and actually transferred on books of corporation held erroneously included in husband's income. Marshall v. Commissioner of Internal Revenue (C. C. A. 1932) 57 F.(2d) 633, cert den (1932) 53 S. Ct. 20, 287 U. S. 621, 77 L. Ed. 539.

Lessor's agreement to give wife equal share in proceeds of oil leases did not constitute effective transfer of interest in funds, as regards tax, where proceeds were placed in lessor's bank account. Ferguson v. Commissioner of Internal Revenue (C. C. A. 1930) 45 F.(2d) 573.

Husband conveying undivided half interest in land to wife held liable for tax only on half of net income from sale of oil and gas leases covering such land. McKee v. Alexander (D. C. Okl. 1931) 48 F.(2d) 838.

Income from land, in which husband and wife each owned undivided half interest, is that of husband only to extent of his interest. McKee v. Alexander (D. C. Okl. 1931) 48 F.(2d) 838.

Income from land, acquired by consideration supplied jointly by husband and wife, is that of husband only to extent of his ratable interest in investment. McKee v. Alexander (D. C. Okl. 1931) 48 F.(2d) 838.

Income from wife's interest in partnership, which interest was given her by husband, though such partnership between husband and wife was not recognized by the state court, held not taxable to husband. Pugh v. U. S. (D. C. W. Va. 1931) 48 F.(2d) 600.

Assignment by attorney of half interest in contingent fee does not relieve him from tax on entire fee. Daugherty v. Commissioner of Internal Revenue (C. C. A. 1933) 63 F.(2d) 77, aff 24 B. T. A. 531.

Customer's letter directing broker to make joint account of customer's marginal transactions in his own and wife's name, with statement that orders would be given "for the writer," held valid gift of half interest in account, for tax purposes, since orders by wife were not excluded. Tracy v. Commissioner of Internal Revenue (C. C. A. 1934) 70 F.(2d) 93, rev 25 B. T. A. 93.

Customer's written request to broker to make joint account of transactions in his own and wife's name, where acquiesced in, held effective, for tax purposes, as transfer of half interest in marginal account, notwithstanding broker's delay in recording transfer. Tracy v. Commissioner of Internal Revenue (C. C. A. 1934) 70 F.(2d) 93, rev 25 B. T. A. 93.

Husband's assignment of profits from joint adventure in marketing stock held gift to wife, and profits were not taxable as income of husband. Copland v. Commissioner of Internal Revenue (C. C. A. 1930) 41 F.(2d) 501, rev 15 B. T. A. 238.

Finding made as to nature of conveyance of real estate by husband in trust for wife for determining whether income from such real estate constituted income to husband. 2 B. T. A. 1061.

Husband held to have realized taxable income on sale of stock to extent of difference between purchase and sale price of stock though stock had been assigned to wife. 3 B. T. A. 491.

Bona fide gift of stock in corporation which dissolved and conveyed real estate to stockholders, who sold it, held, not a gift of proceeds of sale. 3 B. T. A. 780.

Renewal commissions paid, under contract with insurance company, to wife as assignee of contract, held income to husband. 3 B. T. A. 826.

Interest on note transferred to wife as a gift, not taxable to husband. 4 B. T. A. 47.

Assignment to wife of deferred purchase price installments held not a bona fide transfer and profit from sale was income to husband. 5 B. T. A. 628.

Cash dividends held taxable income to husband, notwithstanding previous assignment to wife of right to receive dividends. 5 B. T. A. 963.

Wife's distributive share of income of partnership between herself and a third person held not taxable to husband, where husband had transferred his interest to his wife. 6 B. T. A. 1123.

Immaterial that gift was made by husband to avoid payment of taxes. 6 B. T. A. 1142.

Transaction held oral sale of business to husband by wife, and having been executed income was apportioned accordingly. Hamilton v. Commissioner of Internal Revenue (C. C. A. 1928) 24 F.(2d) 668, rev 7 B. T. A. 362.

Husband, in good faith held to have given to wife his interest in a coal mine, and profits from operation was her, and not his, income. Commissioner of Internal Revenue v. Barnes' Estate (C. C. A. 1020) 30 F.(2d) 280, aff 7 B. T. A. 924.

Salary and fees of resident of California, are taxable to him notwithstanding agreement to divide them with his wife. 10 B. T. A. 723. To substantially the same effect, see 10 B. T. A. 1237.

As to assignment to wife of life interest in income from husband's property, see 11 B. T. A. 406.

Where decedent executed and delivered to his wife an instrument of gift purporting to transfer thereby title to certain stock but reserving to himself certain rights and uses with respect thereto, including right to receive dividends thereon, held that dividends were income to decedent. 23 B. T. A. 930.

Until settlement income from share of deceased wife in community property should be taxed as a whole against survivor as a fiduciary. 25 B. T. A. 69.

Shares of stock held transferred to wife. 24 B. T. A. 1152.

Where lender for value transferred evidences of loans to his wife interest payments held not income of lender. 13 B. T. A. 579.

Evidence held not to sustain the petitioners' allegation that certain securities were transferred by gift by each of them to their respective wives. 13 B. T. A. 1255.

Under will directing executors to continue business and pay net profits to widow for support of herself and children for life, widow, under Pennsylvania law, was entitled to net profits and they were taxable as her income, whether distributed or not. 14 B. T. A. 488.

Gift of certain shares of stock by petitioner to wife held to be bona fide. 16 B. T. A. 592.

Gift to wife of stock received as salary held not to release husband from tax. 26 B. T. A. 147.

Gift to wife held effective. 26 B. T. A. 21.

Gift to wife held incomplete. 25 B. T. A. 1260.

Dividends on stock transferred by husband to wife not taxable to him, though

later paid to him by her in consideration of transfer. 26 B. T. A. 1410.

Where husband quitclaimed his interest in mineral rights theretofore attempted to be conveyed by wife, portion of purchase money received by wife held taxable income. 5 B. T. A. 393.

Evidence held to show that no gift to wife of vendor of half of sale price of land was intended. 29 B. T. A. 1.

Gift to wife held effective to make income of property taxable to her. 30 B. T. A. 301.

V. AMOUNT OF INCOME

111. In general

Where a holder of shares of stock was given the right to subscribe for an equal number of shares of a new issue of stock, which right it sold, the sum received therefor is not taxable in its entirety as income received during the year, under Income Tax Act Sept. 8, 1916, § 2 (repealed), but the amount taxable is the gain or profit realized from the sale which was the excess of the sum received above the net value, after deducting the subscription price, of the new shares it would have obtained by itself exercising the right. Safe Deposit & Trust Co. of Baltimore v. Miles (D. C. Md. 1921) 273 F. 822, affirmed (1922) 42 S. Ct. 483, 259 U. S. 247, 66 L. Ed. 923.

Officer must report only amount at which compensation is finally adjusted at close of year. 1 B. T. A. 103.

Gross income from bookmaking operations determined. 1 B. T. A. 326.

Gross profits of merchant, who took no inventories and whose accounts consisted of daily record of purchases and sales, computed on basis of 33%, and net profit on 22%, of sales. 1 B. T. A. 665.

Taxpayer's method of computing unearned discount approved. 1 B. T. A. 922.

Finding made as to amount of income received by taxpayer from rents. 2 B. T. A. 494. As to salary actually drawn. 2 B. T. A. 1257; 7 B. T. A. 615. As to amount of compensation paid. 3 B. T. A. 242, 425. As to income from sale and reacquisition of interests in business, and operations of business. 8 B. T. A. 213. As to gross income for eight-month period. 8 B. T. A. 287. As to net sales, expenses, and amount of taxes paid. 8 B. T. A. 749.

Commissioner's action in adopting average percentage of profit on gross sales for four-year period to compute gross profits approved. 2 B. T. A. 1290.

Increase in income from rent disallowed when already included. 3 B. T. A. 200.

Computation of gross income and net income on basis of bank deposits approved. 3 B. T. A. 1349.

Where individual organized corporation and transferred his business to it during his taxable year, profits taxable to individual computed by allocating to him such proportion of the entire year's profits as number of days of operation as an individual bore to total number of days in year. 4 B. T. A. 516.

Income from sales may not be arbitrarily increased over amount shown on books when fairly kept. 3 B. T. A. 41.

Manufacture of goods abroad does not reduce the profits from their sale in the United States. 5 B. T. A. 402.

Evidence held insufficient to show overstatement of rentals and gain from sale of stock. 7 B. T. A. 1076.

Amount held erroneously added to income. 8 B. T. A. 68.

Deduction of 7 per cent. discount from total of invoice amounts held proper in the computation of gross sales. 8 B. T. A. 419.

For lack of sufficient evidence of incorrectness, determination of amount of salaries approved. 8 B. T. A. 710.

Stock received as compensation for services taxable only to extent of its fair market value when received. 8 B. T. A. 992.

Evidence held insufficient to warrant a change in respondent's determination of income. 9 B. T. A. 1194; 10 B. T. A. 174.

Method of computing income from certain real estate transactions determined. 10 B. T. A. 503.

Where petitioner's books and accounts have been lost, work sheets and office copies of reports of accountants held to establish the business income. 10 B. T. A. 860.

Transaction between corporation and principal stockholders construed and held to be contributions to capital rather than reductions of salary. *Burns v. Commissioner of Internal Revenue* (C. C. A. 1929) 31 F.(2d) 399, aff 11 B. T. A. 524,

cert den (1929) 50 S. Ct. 25, 280 U. S. 564, 74 L. Ed. 618.

Evidence held insufficient to overcome respondent's determination. 13 B. T. A. 10.

Deficiencies computed by use of percentage method approved in absence of evidence permitting determination by another method. 14 B. T. A. 324.

112. Valuation of property received

Value of good will as fixed in agreement between surviving partners accepted as evidence of actual value at date of acquisition. 1 B. T. A. 441.

In fixing value of gift stock for taxation, legal obligation to convey interest in estate to corporation should be considered. *Whittell v. McLaughlin* (C. C. A. Cal. 1929) 31 F.(2d) 30, affirming (D. C. 1928) 29 F.(2d) 208.

Determination of value of stock and bonds of oil company approved. *Crook v. U. S.* (C. C. A. La. 1929) 30 F.(2d) 917.

When taxpayer endorses with recourse and guarantees payment of note he is not thereby relieved from reporting full amount received in exchange for note. 28 B. T. A. 788.

The petitioner's income from commission notes should be recomputed upon the basis of the fair market value of said notes when received in order to more clearly reflect its income. 14 B. T. A. 797; 14 B. T. A. 801.

Basic date for valuing stock received as part consideration upon sale of property is date when taxpayer is entitled to receive stock and not the date stock certificates were delivered to vendor. 24 B. T. A. 22.

Where stock closely held, price paid to stockholder for purpose of forcing him out of corporation does not reflect actual value. 3 B. T. A. 475.

Evidence of unsuccessful efforts to sell stock or secure loans 4 or 5 years after receipt has no bearing on market value at time of receipt. 3 B. T. A. 911.

Dividends held to support Commissioner's valuation. 3 B. T. A. 911.

Commissioner's finding of market value of stock approved. 3 B. T. A. 920.

Corporate bonds held to have had a market value of not to exceed 50% of par

value, though subsequently paid. 4 B. T. A. 397, 398, 399.

Value of stock determined. 4 B. T. A. 509, 514; 7 B. T. A. 621.

Prices realized upon sales in subsequent years held not to establish value of stock in year of receipt. 4 B. T. A. 509, 514.

That past-due coupons were detached from bonds held insufficient to justify reduction in value. 6 B. T. A. 1048.

Valuation of notes approved. 7 B. T. A. 621.

Fair market value of accounts receivable determined. 8 B. T. A. 65.

President of corporation not estopped from setting up market value of stock received for services with his own income-tax liability by corporation's protest in connection with its tax. 8 B. T. A. 992.

Value of improvements on leased premises determined. 9 B. T. A. 1219.

Evidence held insufficient to warrant disturbing determination in respect to valuation of buildings. 10 B. T. A. 174.

Certain certificates delivered to petitioners for services rendered held income in the amount of their face value. 12 B. T. A. 368.

Market value of public improvement bonds determined. 11 B. T. A. 1302.

See, also, 12 B. T. A. 841.

VI. REQUIREMENT OF INVENTORIES

IN GENERAL

121. In general

One making loan, payable in German marks, when not a dealer, held not entitled to deduct depreciation in marks as a loss under Revenue Act 1919, § 203 (repealed) and regulation thereunder concerning inventories. *Haviland v. Edwards* (C. C. A. N. Y. 1927) 20 F.(2d) 905.

A departmental regulation prescribing the manner of making inventories by a taxpayer must receive a strict construction. *Wood & Ewer Co. v. Ham* (D. C. Me. 1926) 14 F.(2d) 995.

Inventory by income taxpayer held to substantially comply with regulations. *Wood & Ewer Co. v. Ham* (D. C. Me. 1926) 14 F.(2d) 995.

Bank maintaining separate department for sale of securities and carrying securities for resale held to be "dealer in securi-

ties" within department rule allowing such dealers to make return on basis of inventories. *Harriman Nat. Bank v. Commissioner of Internal Revenue* (C. C. A. N. Y. 1930) 43 F.(2d) 950, rev 14 B. T. A. 743.

Summary adjustments either upward or downward are unacceptable where unsupported by facts. 14 B. T. A. 1351.

The Commissioner having been given the power to make regulations with respect to inventories, such regulations must be accepted unless contrary to statute. 14 B. T. A. 1062.

Where taxpayer sold goods on free trial offer theoretical inventory set up by revenue agent not accepted. 1 B. T. A. 641.

Where prior returns made upon basis of inventories taken at cost, taxpayer may reduce inventory by eliminating obsolete goods and writing down usable goods to fair reproduction cost, if actual physical inventory was taken and claim for reduction was supported by detailed evidence. 1 B. T. A. 656.

In considering significance of "inventory" and "inventory account," nomenclature must give way before a true interpretation of the facts. 4 B. T. A. 568, aff without op *Blair v. Amalgamated Sugar Co.* (C. C. A. 1928) 31 F.(2d) 1008.

Book inventory when overstated should be reduced to accord with physical inventory. 5 B. T. A. 570.

Infrequent and isolated transactions in bonds held insufficient to establish that bank was a dealer in securities, entitled to inventory unsold securities at market value. 5 B. T. A. 839.

Inventory sheets held insufficient to support finding of market value or basis for comparison of cost and market value. 6 B. T. A. 525.

In absence of evidence of basis upon which incomplete inventory was taken, or evidence showing whether merchandise on hand included that taken over from another corporation such merchandise not considered in determining cost of goods sold for tax year. 6 B. T. A. 949.

Inventories determined. 8 B. T. A. 368; 11 B. T. A. 782.

Inventories approved. 8 B. T. A. 477; 12 B. T. A. 557; 15 B. T. A. 13.

Where taxpayer made actual count of items on December 21, 1919, and in March, and before filing its income-tax return extended actual invoice cost the inventory

so taken is the correct closing inventory for the year. 10 B. T. A. 521.

Discrepancies appearing upon petitioner's books should, if possible, be so adjusted as to disclose the actual income. 10 B. T. A. 1294.

A corporation engaged in buying and selling lands held not entitled, under section 203, Revenue Act 1918 (repealed) to have its income determined by the use of inventories. 11 B. T. A. 416.

The discrimination in this respect as between taxpayers dealing in land and those dealing in merchandise is not unlawful. 11 B. T. A. 416.

Petitioner dealing only for its own account and not for any customer held not dealer in securities within Art. 105 of Regulation 74 relating to inventories. 29 B. T. A. 664.

Partners in stock dealing firm held entitled to have income computed by use of inventories. 29 B. T. A. 1255.

122. Purpose of inventories

Purpose, in requiring inventories, is clearly to determine annual income. 1 B. T. A. 124.

123. Basis

Taxpayer may take inventories only on basis prescribed by Commissioner. *Kemp v. U. S.* (C. C. A. Tex. 1928) 25 F.(2d) 721.

The basis on which inventories are to be taken is within discretion of Commissioner of Internal Revenue and Secretary of Treasury. *Riverside Mfg. Co. v. U. S.* (1929) 67 Ct. Cl. 117, cert den (1929) 49 S. Ct. 479, 279 U. S. 863, 73 L. Ed. 1002.

Commissioner's determination of deficiency for year in which intermingled articles, some of which were purchased at higher cost, were inventoried at taxpayer's manufacturing cost will not be disturbed where in addition it appears that in closing inventory for preceding year taxpayer used and Commissioner approved inventory on same basis. 16 B. T. A. 788.

Under Regulations 62 held that petitioner was required to compute his inventory at the close of the fiscal year ending February 28, 1921, upon the basis of cost, his inventory at the beginning of that taxable year and in prior years having been upon that basis. 16 B. T. A. 1124.

Two similar lots of merchandise cannot be inventoried on different bases. 9 B. T. A. 301.

124. Consistency and uniformity

Inventories used in computing cost of goods must be computed at beginning and end of year on same basis and this rule applies to trade discounts. 1 B. T. A. 124.

Practice of taxpayer should be uniform. 1 B. T. A. 690.

Greater weight given to consistency than to particular method so long as method or basis used substantially reflects income. 2 B. T. A. 266.

Inventory methods used consistently for many years, which accurately reflect income, not disturbed by arbitrary adjustments that result in distortion of actual income. 2 B. T. A. 266; 5 B. T. A. 918; 10 B. T. A. 1294.

Weight is to be given to consistency of method in taking inventories. 8 B. T. A. 566. But consistency is not sufficient in itself to entitle taxpayer to value inventory on such consistent basis; and where it is not proven that method clearly reflects income, little weight can be given to consistency. 5 B. T. A. 788.

The Commissioner held in error in adding to income a discount deducted consistently from inventories. 11 B. T. A. 547.

125. Correctness of inventories or changes therein

Taxpayer has burden to prove that amount assigned to item listed in inventory was, at least approximately, actual cost. *Industrial Lumber Co., Inc., v. Commissioner of Internal Revenue* (C. C. A. 1932) 58 F.(2d) 123.

Taxpayer's ability to realize total amount shown by inventory at date thereof in cash is not test of sufficiency of inventory, absent authentic evidence of authoritative recognition of it as such. *Industrial Lumber Co., Inc., v. Commissioner of Internal Revenue* (C. C. A. 1932) 58 F.(2d) 123.

Where it appears that reductions claimed are substantially correct they will be allowed even though they are arrived at by a summary average computation. 16 B. T. A. 120.

Reduction on account of goods which became worthless disallowed for want of evidence as to quantity, date of purchase, or cost. 6 B. T. A. 88.

Slight errors in book entries held insufficient to support finding that perpet-

val inventory maintained in cotton book did not clearly reflect income. 6 B. T. A. 1170.

Overstatement of quantity and cost not shown by evidence. 7 B. T. A. 113; 9 B. T. A. 1137.

Evidence held to show error in Commissioner's inventory adjustments. 8 B. T. A. 1236; 10 B. T. A. 95.

Alleged inaccuracies cannot be presumed merely because a high proportion of merchandise gain as compared with sales is disclosed. 10 B. T. A. 1132.

Inventory adjustments approved. 12 B. T. A. 1076.

126. Review of commissioner's determinations

The courts have jurisdiction to review the determination of the Commissioner of Internal Revenue of the value of property for purposes of taxation. *Mimnaugh v. U. S.* (1928) 66 Ct. Cl. 411, certiorari denied (1929) 50 S. Ct. 24, 280 U. S. 563, 74 L. Ed. 617.

Evidence held to support finding of Board that taxpayer had not included in inventory rotten lumber thereafter sought to be eliminated. *Hutchins Lumber & Storage Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 53 F.(2d) 1016.

Commissioner's disallowance of deduction of loss as shown by inventory value of silk, on theory silk was held as security for advances on credits, held not arbitrary. *Finance & Guaranty Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 56 F.(2d) 1061, affirming 19 B. T. A. 1313.

Where Commissioner and Secretary of Treasury in exercise of their discretion refuse to permit deduction of trade discounts from inventory values their decision is not reviewable. *Riverside Mfg. Co. v. U. S.* (1929) 67 Ct. Cl. 117, certiorari denied (1929) 49 S. Ct. 479, 279 U. S. 863, 73 L. Ed. 1002.

Practice adopted by tax authorities with reference to claimed deductions from inventory at market value will not be disturbed unless clearly unlawful. *Industrial Lumber Co., Inc., v. Commissioner of Internal Revenue* (C. C. A. 1932) 58 F.(2d) 123.

Corporation's evidence that its reported inventory was erroneous held not so conclusively established as to justify rejecting income tax assessment based on inventories. *National Mill Supply Co. v.*

Commissioner of Internal Revenue (C. C. A. 1933) 62 F.(2d) 420.

Action of the Commissioner in rejecting closing inventories approved. 17 B. T. A. approved in the absence of proof of error in such adjustments. 17 B. T. A. 630.

Reduction of opening inventory of a business purchased by amount treated as cost of good will held error, where evidence established that no good will asset in fact existed, or was considered. 14 B. T. A. 755.

Where the pleadings, as amended, question the correctness of the closing inventory only, there is no question as to opening inventory before the Board. 14 B. T. A. 496.

The board is unable to determine that a group of alleged expenses were erroneously included in the overhead rate used in computing inventory, in the absence of evidence showing all the items of the group had no place in inventory. 14 B. T. A. 496.

Where petitioner took inventory at December 31, 1917, at market, which exceeded cost, petitioner properly reduced inventory taken December 31, 1918, at cost to bring it to market value for purpose of determining the tax liability for 1918. 16 B. T. A. 968.

Action of Commissioner in rejecting petitioner's original inventory and its alternative offer of a corrected inventory reduced by anticipated shrinkage and estimated losses through degrading and discount was approved. 20 B. T. A. 394.

Evidence held not to justify changing the Commissioner's adjustment of the petitioner's closing inventory. 21 B. T. A. 38.

Respondent's determination of petitioner's opening inventory for 1923 approved, for lack of evidence showing such determination to be erroneous. 23 B. T. A. 1362.

Taxpayer made returns for fiscal year ended Aug. 31, 1917, and fiscal period Sept. 1 to Dec. 31, 1917. Complete physical inventory was not taken at Aug. 31, 1917, but one was taken at Dec. 31, 1917, which showed physical inventory in excess of book inventory. Held, allocation of excess to the two periods should not be disturbed in absence of evidence that true inventory at Aug. 31, 1917, exceeded amount allowed by Commissioner. 2 B. T. A. 223.

Where original inventory was not available and Commissioner based opening inventory upon calculations from taxpayer's books, determination not disturbed in absence of proof as to identity or correctness of sheets submitted by taxpayer. 2 B. T. A. 351.

Determinations which have compensating effects upon succeeding taxable years not disturbed, except upon convincing evidence of error. 2 B. T. A. 709.

In absence of records from which Board may determine gross sales, Commissioner's determination not disturbed. 3 B. T. A. 41.

Commissioner's determination approved for lack of sufficient evidence to show error. 10 B. T. A. 1378.

Commissioner's denial of right to use inventories approved for lack of evidence. 12 B. T. A. 728.

ITEMS INCLUDED OR DEDUCTIBLE

131. Items included or excluded in general

Taxpayer held not entitled to deduct amount of reserves for obsolete and unsalable merchandise included in closing inventories. 2 B. T. A. 89.

Discount required to bring inventory to net realizable figure at date thereof held not deductible by taxpayer from inventory. *Industrial Lumber Co., Inc., v. Commissioner of Internal Revenue* (C. C. A. 1932) 58 F.(2d) 123.

Amounts for shrinkage and breakage, and for degrade, held not deductible by taxpayer, a lumber manufacturer, from inventory at market value. *Industrial Lumber Co., Inc., v. Commissioner of Internal Revenue* (C. C. A. 1932) 58 F.(2d) 123.

Where books are on accrual basis and accounts payable is credited for merchandise ordered before but delivered after close of fiscal year, there should be an offsetting debit to inventory. 2 B. T. A. 817.

Practice of adjusting closing inventory by taking sum of 2% of both sales and purchases into closing balance sheet each year as business expense disapproved. 2 B. T. A. 1313.

Inclusion in gross sales of proceeds of sales made after tax year disallowed. 3 B. T. A. 41.

Salesmen's commissions on orders unfilled at beginning of year are not proper inventory items. 4 B. T. A. 916.

Gross sales for tax year may not be reduced by amount of refunds due to decline in market price occurring after tax year. 5 B. T. A. 271.

Accounts receivable account which reflects selling price of goods containing latent defects, may not be reduced by original selling price of goods returned in the succeeding year. 9 B. T. A. 989.

Where title to merchandise which taxpayer had contracted to purchase had not passed, and payment therefor was not due by the close of the year, held no liability accrued within the year, and the merchandise may not be included in closing inventory. *Barde Steel Products Corporation v. Commissioner of Internal Revenue* (C. C. A. 1930) 40 F.(2d) 412, aff 14 B. T. A. 209.

Inventories used in computing cost of goods sold must be computed at beginning and end of each year on substantially same basis. 22 B. T. A. 175.

Title to coal contracted for but not delivered or loaded on cars for shipment to taxpayer had not passed at close of year and such coal could not be included in inventory, and no deduction could be taken because of loss thereon. 24 B. T. A. 307, aff without reference to this point *Commissioner of Internal Revenue v. Northern Coal Co.* (C. C. A. 1933) 62 F.(2d) 742.

132. Property and merchandise to be included

Livestock, purchased for use in dairy business, accounted for by inventory method and included in inventory from time title passed. 1 B. T. A. 385.

Where language of internal revenue regulation determining basis for taxpayer's inventory did not exclude lumber manufacturers, court could not do so. *F. T. Dooley Lumber Co. v. U. S.* (C. C. A. Ark. 1933) 63 F.(2d) 384, cert den (1933) 54 S. Ct. 58, 290 U. S. 640, 78 L. Ed. 556.

Taxpayer is entitled to inventory certain supplies necessary in business of manufacturing sugar and deduct from inventory depreciation therein, but the question what supplies may be so inventoried is capable of no categorical answer. *Francisco Sugar Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 47 F.(2d) 555.

Taxpayer was not entitled to reduce inventory because of decrease in value of goods carried as convenience to customers and sold at cost. *Francisco Sugar Co. v. Commissioner of Internal Revenue* (C. C. A. 1031) 47 F.(2d) 555.

Taxpayer who consistently inventoried and included in returns stocks and securities held for investment, may not claim upon appeal that they should be excluded from inventory. 1 B. T. A. 868.

Claim that shopworn and obsolete goods, which were inventoried, had not been included in previous inventories, held not established by evidence. 2 B. T. A. 834.

Goods in transit may not be included in closing inventory, without also including them in merchandise purchases. 3 B. T. A. 1119.

Merchandise held to have been purchased during tax year, and cost should be included in purchases, whether taxpayer on cash or accrual basis. 4 B. T. A. 209.

Merchandise used in filling orders and not on hand at close of year not included in closing inventory. 6 B. T. A. 89.

Income of vendor reflected by including rejected goods in closing inventory at inventory value rather than by including sale price in gross sales. 6 B. T. A. 172. To the same effect, see 10 B. T. A. 8.

Right to inventory work mules denied where included at price at which mules sold by others. 6 B. T. A. 813.

Merchandise shipped on approval or with knowledge that it was not in accordance with contract, should not be included in gross sales, but remains a part of inventory. 8 B. T. A. 49.

Petitioner may include in its inventory only property to which it had title. *Brown Lumber Co. v. Commissioner of Internal Revenue* (App. D. C. 1929) 35 F.(2d) 880, aff 9 B. T. A. 719, in which circumstances were held to show intent that title should pass as to one contract, but insufficient as to another contract.

A partnership, held not entitled to inventory at their market value and so reflect in the accounts and inventories of the partnership securities carried in the name of a corporation. 9 B. T. A. 965.

Merchantable stock in trade of a going retail business held to have a readily realizable value. 20 B. T. A. 499.

Merchandise purchased by petitioner, title to which remained in seller, can not be included in inventory, if any, kept by petitioner. 24 B. T. A. 871.

133. Items of costs included

Freight charges, incurred in shipping defective naphtha to refinery, not included in cost of naphtha. 1 B. T. A. 690.

Taxpayer conducted both wholesale and retail business and billed goods to retail stores at wholesale cost plus 5%, representing cost of handling. Held, inventories taken on basis of cost in retail stores should include 5% charge. 2 B. T. A. 906.

Leakage and consumption on premises is not a manufacturing cost of beer and may not be deducted from total production. 2 B. T. A. 1193.

Cost of goods withdrawn for personal use may not be included in cost of goods sold. 3 B. T. A. 37, 434.

Where it is impossible to determine whether sales price was represented in income, or whether goods were included in inventory, lump sum purporting to represent purchases may not be included in cost of goods sold. 3 B. T. A. 41.

Art. 1583, reg. 45, providing that, in determining cost, discounts, except cash discounts, may be deducted at option of taxpayer, is consistent with sec. 203, Act 1918 (repealed) and is reasonable. 4 B. T. A. 246.

An arbitrary deduction each year of a fixed percentage of cost, without regard to actual discounts received is inconsistent with art. 1583. 4 B. T. A. 246.

Amount of goods accepted in payment of customers' accounts should be included in purchases when proceeds of sales included in income. 5 B. T. A. 9.

Cost of goods purchased from stockholder and sold in regular course of business, should be included in purchases. 5 B. T. A. 761.

Contention that excess of loans from banks over accounts payable should be added to cost of purchases, denied for lack of evidence. 6 B. T. A. 1300.

Expenditures for public warehousing and subsequent drayage to the petitioner's mill, do not constitute additional costs of cotton for inventory purposes, but are business expenses and proper deductions from income. 9 B. T. A. 301.

Factory supplies, and stores not consumed in production processes, may not be included in inventory in determining cost of goods sold. 9 B. T. A. 938.

Where inventory of goods in process and finished goods on hand at close of taxable year is taken at cost, it should include amount of bonuses paid to employees who participated in production of goods composing the inventory. 17 B. T. A. 340.

134. Exclusion of items or cost thereof

Cost of lumber rendered unsalable by rot and damage and discarded held deductible from closing inventory. 4 B. T. A. 705.

Cost of parts manufactured for use in production of particular models which became obsolete and were abandoned and scrapped excluded from closing inventory notwithstanding physical removal did not take place until following year. 6 B. T. A. 61.

Where supplies were actually used, but their usefulness was reduced by changed business conditions, closing inventory of supplies should not be reduced by proportionate part of cost of supplies representing lost usefulness. 6 B. T. A. 1270.

Petitioner entitled to reduce inventory on account of scrapped merchandise for which no market was to be found. 7 B. T. A. 659.

Reduction of inventory because of obsolete parts held proper. 8 B. T. A. 407.

Supplies for the repair, maintenance and operation of a plant, which do not form a part of the manufactured article, held not subject to the inventory provisions of the law and regulations. 14 B. T. A. 1062.

135. Effect of including items

That goods sold for future delivery, and carried in a so-called "inventory account" at sales price, were undelivered and included as part of inventory does not warrant conclusion that sales were not consummated within tax year. 4 B. T. A. 568, aff without op (C. C. A. 1929) 31 F.(2d) 1008.

VALUATIONS

141. In general

Balance sheets of corporation and predecessor partnership, and statement of officer held insufficient to prove actual cash

value of property purchased from partnership. 1 B. T. A. 286.

Sec. 331, Act of 1918 (repealed) as to ascertaining invested capital did not affect value which corporations might put on merchandise purchased from predecessor. 1 B. T. A. 288.

Taxpayer engaged in converting cotton goods into finished product sold to jobbers and manufacturers held "manufacturer" within regulation respecting method of determining inventory for tax liability. *Bedford Mills, Inc. v. U. S.* (Ct. Cl. 1932) 59 F.(2d) 203, motion den (Ct. Cl. 1933) 2 F.Supp. 769, cert den (1933) 54 S. Ct. 71, 290 U. S. 655, 78 L. Ed. 567.

In absence of evidence, Board will not presume that taxpayer's inventory had any value on March 1, 1913, or that any portion of inventory at beginning of year was not paid for. 1 B. T. A. 589, 611.

Adjustments of income by which overvaluation of inventory at beginning of 1918 and 1919 was added to income and overvaluation at end of such years subtracted therefrom, held correct. 2 B. T. A. 256.

Purpose of inventory valuation is clearly to reflect income. 2 B. T. A. 206.

Deficiency resulting from reduction of opening inventory of corporation disallowed. 2 B. T. A. 483.

Use of unit value as of March 1, 1913, which was higher than unit value representing original cost of timber, held proper. 3 B. T. A. 1282.

Partners, who took over livestock at cost to predecessor partnership, held entitled to reflect decrease in value on their returns. 4 B. T. A. 634.

Amounts arbitrarily added to closing inventory for purpose of securing credit should be eliminated. 6 B. T. A. 89.

Claim for depreciation of current inventories will be denied where there is no evidence of cost. 6 B. T. A. 1360.

Evidence produced to support petitioner's claim held too indefinite and uncertain to warrant a modification of the pricing of the closing inventory of 1919. 10 B. T. A. 379.

In arriving at market value of goods in process the item of labor should go into the computation at prices prevailing at the date of the inventory as reduced shortly before. 12 B. T. A. 37.

Respondent held to have erred in increasing the value of the closing inventory of materials and product, but error not shown with reference to supplies. 12 B. T. A. 468.

A witness may not testify to values on information gained from trade journals not produced in evidence. Guy v. Commissioner of Internal Revenue (C. C. A. 1929) 35 F.(2d) 139, aff 13 B. T. A. 51.

142. Basis of valuation

Taxpayer cannot value inventory at market price, if it is higher than cost. U. S. v. Kemp (C. C. A. Tex. 1926) 12 F.(2d) 7, certiorari denied (1926) 47 S. Ct. 97, 273 U. S. 703, 71 L. Ed. 848.

Taxpayer in inventorying merchandise cannot use both cost and market price in same inventory. James H. Bunce Co., Inc., v. Eaton (D. C. Conn. 1929) 36 F.(2d) 379.

Taxpayer held entitled under evidence to reduce inventory shown in return by amount of unsalable phonograph records included at factory cost. Lucker v. U. S. (Ct. Cl. 1931) 53 F.(2d) 418.

Where cost of merchandise was lower than market, taxpayer in inventorying merchandise at cost could not deduct percentage therefrom. James H. Bunce Co., Inc., v. Eaton (D. C. Conn. 1929) 36 F.(2d) 379.

Where inventories are necessary to determine taxable income, "base stock" method is improper, that method consisting in the use of a constant price or nominal value for a so-called normal quantity of material in stock. Lucas v. Kansas City Structural Steel Co. (1930) 50 S. Ct. 263, 281 U. S. 264, 74 L. Ed. 848, reversing (C. C. A. 1929) 33 F.(2d) 53.

In determining taxable income of company engaged in fabrication and erection of structural steel plates, reserve stock could not be valued at constant price on theory material therein had no relation to profits. Lucas v. Kansas City Structural Steel Co. (1930) 50 S. Ct. 263, 281 U. S. 264, 74 L. Ed. 848, reversing (C. C. A. 1929) 33 F.(2d) 53.

Closing inventory of taxpayer, a lumber manufacturer, which treated average cost as cost of lumber of any grade, held properly rejected. Industrial Lumber Co., Inc., v. Commissioner of Internal Revenue (C. C. A. 1932) 58 F.(2d) 123.

"Market" for goods held by manufacturer on given inventory date must be

determined on basis of elements of cost entering into production. Bedford Mills, Inc., v. U. S. (Ct. Cl. 1933) 2 F. Supp. 769, den motion (Ct. Cl. 1932) 59 F.(2d) 263, cert den (1933) 54 S. Ct. 71, 290 U. S. 655, 78 L. Ed. 567.

In tax refund action, court's finding that lumber manufacturer inventoried defective lumber on basis of bona fide selling price less cost of sale held not construable as determination that defective lumber was unsalable at normal prices within meaning of internal revenue regulation authorizing such inventory basis, and findings, as oppositely construed, were sustained by evidence. F. T. Dooley Lumber Co. v. U. S. (C. C. A. Ark. 1933) 63 F.(2d) 384, cert den (1933) 54 S. Ct. 58, 290 U. S. 640, 78 L. Ed. 556.

An inventory taken by a manufacturer of dealer in merchandise at cost or market value, whichever is lower, is permitted by subdivision (g) of section 8 and by subdivision (d) of section 13 of the Act of 1916 subject, of course, to regulations made in accordance with said act. The same rule applies to a dealer or merchant in securities; and it is a matter for regulations issued by the Treasury Department under the authority of the aforesaid act to determine what constitutes a dealer or merchant in securities. (1918) 31 Op. Atty. Gen. 301.

Commissioner's disallowance of certain reductions in inventory values made for the purpose of reducing inventories to the basis of cost or market, whichever was lower, approved. 22 B. T. A. 487.

In fixing inventory values of goods of different grades and quality, held that an arbitrary flat rate should not be used, but that each grade should be inventoried at its proper value. 19 B. T. A. 8.

Bags for containing fertilizer are properly inventoried at cost or market whichever is lower. 13 B. T. A. 39.

Petitioner could file inventory of grocery business on cost basis, and that of cattle ranch on basis of market. 15 B. T. A. 1080.

Where petitioner, in return filed before issuance of Treasury Decision permitting inventories on basis of cost or market whichever was lower, priced inventories for year ending March 31, 1920, on basis of cost, but in 1921 priced inventories on basis of cost or market whichever was lower, petitioner should be allowed to revise inventories for year 1920 on basis of cost or market whichever was lower. 15 B. T. A. 1096.

Commissioner is entitled to require by regulation that stock on hand shall be valued at its then value, rather than its value at the beginning of the year. *Chicago Frog & Switch Co. v. U. S.* (1929) 68 Ct. Cl. 180.

Taxpayer obligated to sell merchandise for less than market price, may not include at less than cost merchandise suitable for manufacture to fill, but not specifically appropriated to, contracts. 1 B. T. A. 121.

Unless it proves higher actual cash value, corporation taking over business of partnership must use closing inventory of latter in computing cost of merchandise sold during first taxable year. 1 B. T. A. 236.

Single items may not be taken at market where usual method of pricing inventory is cost. 1 B. T. A. 600.

Where taxpayer adopted combination method, rendering impossible direct checking, Commissioner justified in reconstructing inventory on basis of cost, used in closing inventory for previous year. 1 B. T. A. 848.

When closing inventories disclose damaged merchandise, bona fide selling price less cost of selling, within 30 days after inventory date, may be used in valuing such goods. 1 B. T. A. 1040. See, to substantially same effect where market abnormal at date of inventory. 7 B. T. A. 1250.

Average cost method not in accordance with method approved by Commissioner must be substantiated in its application to goods of taxpayer as a whole. 2 B. T. A. 306.

Taxpayer assigned to each class of goods a value which in its judgment reflected market value. Held, inventory was not arbitrarily reduced from cost to market, but was taken on basis of cost or market, whichever was lower, and reflected market value. 2 B. T. A. 460, in which it was held that valuation was substantiated by sales in following year.

Valuation of inventory made by appraisers pursuant to direction of probate court, which was based on full market value and was lower than cost, accepted. 4 B. T. A. 74.

Where neither value nor cost was shown and there was no evidence that inventory figures represented cost, or cost or market, whichever was lower, taxpayer had not substantiated his claim for

increase in closing inventory. 4 B. T. A. 118.

Evidence that several years after taking of inventory goods became obsolete and were sold at less than market value used in closing inventory was insufficient to justify claim of overvaluation. 4 B. T. A. 633.

Closing inventory held taken on basis of cost or market, whichever was lower, and taxpayer entitled to take closing inventory for subsequent year on same basis. 5 B. T. A. 456.

Inventories held properly valued on basis of cost or cost or market, whichever was lower. 5 B. T. A. 625.

Method used must conform to best accounting practice and clearly reflect income. 5 B. T. A. 788.

Cost of merchandise payable in pounds sterling computed by reducing sterling to dollars at rate of exchange prevailing on date of purchase. 6 B. T. A. 403.

Testimony held insufficient to justify valuation as made on basis of cost or market, whichever was lower. 6 B. T. A. 1042.

Taxpayer's records held a perpetual inventory establishing cost of cotton, which should be used for closing inventory rather than an arbitrary basis in which taxpayer used opening inventory and purchases of raw cotton made during year to arrive at a weighted mathematical average unit cost. 6 B. T. A. 1179.

Commissioner's method of valuing inventory on basis of cost of cotton most recently purchased held erroneous. 6 B. T. A. 1179.

Where inventories consistently taken on basis of market, recomputation of closing inventory on basis of cost or market, without changing opening inventory, distorted income and taxpayer's method should be used. 7 B. T. A. 36; 10 B. T. A. 382.

"Market price" inventory prepared by petitioner and approved by the Commissioner accepted in lieu of "fair value" inventory contended for by petitioner. 7 B. T. A. 1066.

Valuation at sale price when lower than cost, in absence of any replacement market, see 8 B. T. A. 477.

Commissioner in changing inventory from a cost or market, whichever was

lower, to a cost basis held error. 8 B. T. A. 767.

Inventory values fixed by going prices at taxpayer's own market rather than one at a distance. 8 B. T. A. 1090.

Where petitioner was granted permission to change the basis of valuing its inventories beginning with the closing inventory for 1921, but did not make such change, the use of the new method beginning in 1922 was unauthorized. 8 B. T. A. 1115.

Commissioner's adjustments of raw cotton inventories to cost reversed. 9 B. T. A. 301.

Market price of raw cotton as used by the petitioner in valuing its inventory of raw cotton, goods in process and finished goods approved. 10 B. T. A. 646.

Part of inventory of raw materials adjusted from cost to market in accordance with testimony. 10 B. T. A. 710.

Petitioner permitted at close of the year to change basis of taking inventory from cost, to cost or market, whichever is lower, as authorized by article 1582 of Regulations 45. 11 B. T. A. 812.

Yarns in process or finished yarns, suitable for delivery on contracts upon which specifications had been received at date of inventory valued at cost and balance at market, which was less than cost. 12 B. T. A. 37.

Portion of inventory of raw materials required to fill firm sales contracts for finished goods priced at cost. 12 B. T. A. 578.

Liquors on hand at October 31, 1919, properly inventoried on the basis of cost or market, whichever was lower. 12 B. T. A. 1067.

See, also, 12 B. T. A. 407.

143. — Change or revision

Where taxpayer took inventory for 1917 at cost, inventory for 1918 was improperly taken at retail prices without changing inventory at close of 1917 from cost basis to retail basis. James H. Bunce Co., Inc., v. Eaton (D. C. Conn. 1929) 36 F.(2d) 379.

Revision of inventories denied for insufficiency of evidence. 13 B. T. A. 702.

Where inventories taken at cost or market whichever was lower but items were included at cost when market value was less, the closing inventory should be reduced by the difference. 13 B. T. A. 35.

Petitioner held entitled to inventory his goods on hand at the end of 1920 on the basis of cost or market, whichever was less, although at the beginning of the year he inventoried them at cost. 14 B. T. A. 1208.

Petitioner for 1919 took its closing inventory on basis of "cost" and for 1920 on basis of "cost or market." Held, that it could not adjust its 1919 inventory by valuing only a portion of same at "cost or market." Further, held, on evidence, that petitioner was not entitled to further adjust cost of new cars on hand, which were superseded by new models. 16 B. T. A. 114.

Inventory adjustments allowed where valuations of lumber made on the basis of average cost of different grades were excessive due to higher than average percentages of lumber in the lower grades. 19 B. T. A. 277.

Where taxpayer took inventories based upon estimated market value, it may not file amended returns based upon revised inventories in absence of evidence as to cost of goods or that revised inventories more accurately reflected market value. 1 B. T. A. 1169.

And closing inventory on basis of cost may not be changed to cost or market basis, by use of replacement cost figures, collected in part several years thereafter, and based upon opinions as to then market value. 2 B. T. A. 1329.

And inventory taken upon the basis of cost or market, whichever is lower, may not later be revised to accord with the market price established subsequent to the inventory date. 8 B. T. A. 884.

But when closing inventories made without actual knowledge of market conditions and prices, revised inventories based on bona fide market prices, ascertained within reasonable time and based on market conditions then existing and not on future contingencies, will be accepted. 2 B. T. A. 109.

And inventory taken at cost or market, might upon discovery that it contained a large quantity of defective material be corrected. 9 B. T. A. 989.

Where taxpayer took closing inventory at cost and a month later, reduced it by an arbitrary amount, claiming revised figure represented market value, held, reports from correspondents did not prove market value and computation on basis

of original cost figure approved. 6 B. T. A. 711.

Inventory priced according to manufacturers' printed price list of earlier date was not an inventory at cost or market whichever was lower, and revision based upon actual knowledge of market prices was properly used as basis. 7 B. T. A. 90.

The respondent erred in increasing closing inventory from cost to market where the alleged market was higher than cost. 11 B. T. A. 1425.

144. — Additions and deductions

Owner of retail stock of merchandise held entitled to make reasonable deduction of percentage of total of cost price inventory in returning market value. *S. G. Sample Co. v. Commissioner of Internal Revenue* (C. C. A. La. 1928) 23 F.(2d) 671.

Practice of reducing closing inventory by deducting certain percentages from cost, not followed with consistency and at regular intervals, held insufficient to justify finding that closing inventory was taken at cost or market, whichever was lower. 1 B. T. A. 973.

Reduction of inventory from cost to cost or market, whichever was lower, by subtracting 7½% therefrom, disallowed; method held not justified by testimony. 2 B. T. A. 65.

Taxpayer may not list goods at cost and subtract estimated amount to obtain value of second-hand, exchanged, obsolete, shopworn and defective goods when not offered for sale within 30 days, as required by regulations, and statements showing original adjustments not produced. 2 B. T. A. 90.

Deduction from market value of amount estimated to bring inventory down to cost, accepted where method consistently followed and true income clearly reflected. 2 B. T. A. 266.

Inventory value obtained by deducting from cost an average percentage in each department of a dry goods store, for deterioration, is not an inventory at market. 2 B. T. A. 369.

Inventory at cost may not be reduced on account of unseasonable merchandise based on approximation by officer of taxpayer. 2 B. T. A. 425.

Inventory taken at cost may not be reduced by straight percentage basis to determine market value of shopworn and out-of-style goods. 3 B. T. A. 52.

Disallowance of such reduction in closing inventory approved in absence of evidence as to action taken respecting opening inventory. 3 B. T. A. 52.

Deduction based upon estimated decrease in value of total inventory by reason of obsolete and shopworn goods, does not necessarily bring inventory to cost or market, whichever is lower. 4 B. T. A. 589.

Taxpayer may not deduct as an inventory loss an arbitrary estimate of shrinkage in value due to spoilage and obsolescence. 5 B. T. A. 53.

Where physical inventory taken at actual cost was revised by officer of taxpayer having knowledge of cost and market values to show cost or market, whichever was lower, inventories held taken on basis of cost or market, whichever was lower. 5 B. T. A. 436.

Inventory of used automobiles at bona fide selling prices, as determined from experience, less cost of selling, held proper. 5 B. T. A. 818.

Where inventories taken on basis of selling prices less a percentage of total inventory, an arbitrary reduction of selling price of part of inventory, not allowed in absence of evidence that selling price did not represent correct price. 5 B. T. A. 847.

Inventory taken at cost, reduced by a percentage representing amount of estimated average decline in market price during year, held not to represent market value. *S. G. Semple Co. v. Commissioner of Internal Revenue* (C. C. A. 1928) 23 F.(2d) 671, aff 5 B. T. A. 1034.

Where taxpayer inventoried his stock of goods at cost and then deducted 10 per cent., held that the Commissioner did not err in restoring the amount deducted. 9 B. T. A. 1289.

The valuation of merchandise inventory by petitioner approved with relation to cash discounts deducted. 10 B. T. A. 825.

Where an opening inventory was taken at cost and in the closing inventory certain articles were inventoried at market which was higher than cost and the inventory otherwise was taken at cost, the closing inventory should be reduced by the difference between market and cost of the items inventoried at market. 12 B. T. A. 412.

The action of the petitioner in determining the cost of goods by reducing the

invoice price by 5 per cent. representing discounts, approved. 12 B. T. A. 1021.

Deduction from inventories on account of discounts held not consistent with taxpayer's accounting practice and not to reflect true taxable income. 13 B. T. A. 305.

Reduction of inventories by percentage of loss sustained, determined by inspection was not arbitrary. 13 B. T. A. 62.

Inventory taken at cost may not be reduced by straight percentage basis to determine market. 22 B. T. A. 133.

145. Determination of value

Valuation of securities based upon appraisal of actual value by taxpayer, an experienced investment broker, accepted in lieu of valuation of revenue agent based upon newspaper reports of sales on stock exchange. 1 B. T. A. 868.

Price for which damaged goods sold several years later not evidence of market value on date inventory was closed. 1 B. T. A. 1040.

Average cost, based upon erroneous direct cost figure and unsupported miscellaneous and transportation cost figure, rejected. 2 B. T. A. 306.

Value claimed disallowed for want of evidence as to whether cost or market value was lower. 2 B. T. A. 873.

Finding made as to correct amount of opening inventory on basis of cost. 3 B. T. A. 604.

Where taxpayer inventoried new cars, tractors, and implements on basis of cost or market, whichever was lower, and used cars on basis of market values, taxpayer's determinations of market values approved. 4 B. T. A. 589.

Values determined. 9 B. T. A. 1216; 10 B. T. A. 237; 7 B. T. A. 143; 11 B. T. A. 610; 10 B. T. A. 1134; 12 B. T. A. 326, 433, 455, 456.

Values of items appearing in petitioner's opening inventory determined. 24 B. T. A. 952.

Market value of automobiles at December 31, 1920, determined for inventory purposes. 10 B. T. A. 1001.

The inventory value of cotton as determined by the petitioner approved on the evidence. 11 B. T. A. 903.

Inventory of cotton as originally taken held more nearly correct than any which

could be arrived at on the basis of the opinion testimony and not disturbed. 12 B. T. A. 37.

Petitioners' valuation of ewes and lambs in closing inventory for the year 1919, approved. 12 B. T. A. 465.

In perpetual inventory kept at cost and adjusted each year to "cost or market, whichever is lower," depreciated or obsolete merchandise may be included at actual value as determined by experienced officials of taxpayer. 13 B. T. A. 127.

Where market value at time of inventory was less than cost, petitioner is entitled to have its tax liability computed upon basis of inventory at market value. 14 B. T. A. 765.

Value of opening inventory determined for purpose of computing gain derived from goods sold. 15 B. T. A. 1208.

146. Review of commissioner's determination

Burden of proof is on taxpayer to establish error by Commissioner in valuing inventory; proof of value of part of inventory is insufficient. 2 B. T. A. 335.

Evidence respecting mistake in inventory values held insufficient to overcome redetermination of deficiency by commissioner. *Louisville Cooperage Co. v. Commissioner of Internal Revenue* (C. C. A. 1931) 47 F.(2d) 509, cert den (1931) 52 S. Ct. 13, 284 U. S. 630, 76 L. Ed. 536.

Evidence held insufficient to show that the commissioner erred in fixing values in the absence of proper inventories. *Pekin Cooperage Co. v. U. S.* (1930) 68 Ct. Cl. 723.

Where Board is unable from evidence to determine whether taxpayer arrived at correct valuation, claim that Commissioner erred in adopting a different method will be denied where result obtained is just and reasonable. 4 B. T. A. 741.

Commissioner's determination not disturbed for faulty method in absence of evidence of incorrect result. 5 B. T. A. 1231.

Commissioner's valuation of inventories approved for lack of evidence. 8 B. T. A. 996.

Valuation on average cost basis used in other years not disturbed in absence of clear proof. 10 B. T. A. 232.

Where taxpayer's method of computation was substantially right commission-

er held in error in rejecting it. *Rookwood Pottery Co. v. Commissioner of Internal Revenue* (C. C. A. 1930) 45 F.(2d) 43, rev 11 B. T. A. 470.

Where respondent allowed a sum representing cost of goods as a deduction, and by affirmative plea avers error in so doing, the burden is upon him to prove the error. 12 B. T. A. 716.

Adjustments made by the respondent in the petitioner's closing inventories for 1920 and 1921 approved. 15 B. T. A. 733.

GAIN OR LOSS AND INCOME

151. Loss on inventory

In ascertaining net loss in inventory, all increases and losses in market value of livestock must be included. 1 B. T. A. 385.

Where merchant's stock on hand at end of tax year has declined in value and is inventoried below cost amounts in excess of inventory value realized from sales in subsequent years are attributable to such years. *United States Cartridge Co. v. U. S.* (Ct. Cl. 1932) 52 S. Ct. 243, 284 U. S. 610, 76 L. Ed. 431, rev (Ct. Cl. 1931) 48 F.(2d) 983.

Taxpayer held entitled to reduction of its cost price inventory of magnetic radio equipment, subsequently discovered to be completely obsolete, and reimbursement for income tax mistakenly paid on basis of such inventory. *Queen City Woodworks & Lumber Co. v. Crooks* (D. C. Mo. 1934) 7 F. Supp. 684.

Deduction from taxpayer's closing cost price inventory for 1928 because of magnetic radio equipment, subsequently discovered to be obsolete, held proper for such year, in which loss occurred. *Queen City Woodworks & Lumber Co. v. Crooks* (D. C. Mo. 1934) 7 F. Supp. 684.

Internal Revenue Commissioner's regulations for determination of taxpayer's inventory must not be contrary to law as compelling payment of tax on income not clearly or fairly reflected in taxpayer's return. *Queen City Woodworks & Lumber Co. v. Crooks* (D. C. Mo. 1934) 7 F. Supp. 684.

Deductible loss held not predicable on reduction of nursery stock and no adjustment of inventory held permissible. 2 B. T. A. 1084.

Computation of loss on sale of entire inventory at close of year, separately from

gain on sales during year, approved where true income reflected. 4 B. T. A. 686.

Where holding company purchased for stock the assets and assumed the liabilities of another corporation, and disposed of inventory acquired at less than value at which taken over, a holding that the two companies were affiliated held not to deprive consolidated group of benefit of inventory loss. 4 B. T. A. 1274.

Credits, representing difference between amounts originally billed and petitioner's cost, allowed to foreign subsidiaries to enable them to meet competition and thereby continue as outlets for petitioner's goods in foreign market are not capital contributions, but constitute deductible loss. 21 B. T. A. 569.

152. Inventory values as income

Where taxpayer carried merchandise purchase account at net cost after deducting cash discounts, the cash discounts should not be added to net income without increasing merchandise purchases in similar amount. 1 B. T. A. 417.

Increase of book inventory to agree with physical inventory, offset by reserve for invoices not received, not additional income. 1 B. T. A. 534.

Taxpayer changing from cash to accrual basis held required to take up in income in year for which change is made inventory as of beginning of year. 1 B. T. A. 589, 611.

Value of inventory at beginning of year, established by evidence, included in computing tax liability. 1 B. T. A. 995.

Taxpayer adjusted inventory to reflect increases and decreases in list prices and credited or debited reserve for appreciation to offset such changes. Held that amount remaining in reserve at end of year must be included in net income. 5 B. T. A. 570.

Action of Commissioner in correcting opening and closing inventories and adding to income increase in amount of receivables not disturbed, in absence of evidence that such increase included in gross sales reported. 4 B. T. A. 135.

Cost of supplies included in inventory to conform to new accounting practice held not income. 6 B. T. A. 24.

Inventories giving effect to discounts may properly be used in computing taxable income. 8 B. T. A. 566.

Evidence held not to show that the Commissioner was in error in adding to net income amount deducted from perpetual inventory. *Coon Auto Co. v. Commissioner of Internal Revenue* (C. C. A. 1929) 35 F.(2d) 504, aff 8 B. T. A. 763.

§ 23. Deductions from gross income

In computing net income there shall be allowed as deductions:

(a) **Expenses.** All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(b) **Interest.** All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from the taxes imposed by this chapter.

(c) **Taxes generally.** Taxes paid or accrued within the taxable year, except—

(1) Federal income, war-profits, and excess-profits taxes;

(2) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

(3) estate, inheritance, legacy, succession, and gift taxes; and

(4) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(d) **Taxes of shareholder paid by corporation.** The deduction for taxes allowed by subsection (c) shall be allowed to a corporation in the case of taxes imposed upon a shareholder of the corporation upon his interest as shareholder which are paid by the corporation without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.

(e) **Losses by individuals.** In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

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