Dear Friend,

The enclosed copy of *The Work and Jurisdiction of the Bureau of Internal Revenue*, should be in the hands of every person who has paid or who has ever contemplated paying a federal income tax. This rough copy is in your hands because you may have the expertise to put it in a more readable form or you may know someone who can.

Any person with knowledge of the contents of *The Work and Jurisdiction of the Bureau of Internal Revenue*, prepared under the direction of the Commissioner of Internal Revenue in 1948, will understand that the abolition of the Office of the Collector ended any possibility of federal internal revenue enforcement after the Reorganization of the IRS in 1952. The United States Supreme Court confirmed this in 1960, in *Flora v. United States*, 362 U.S. 145.

Since the Reorganization, the IRS has used a variety of ploys to provide an illusion of enforcement capability. That story can be told with other official documents. For the time being, I need someone who can put, *The Work and Jurisdiction of the Bureau of Internal Revenue*, in a pristine format that can be accessed by everyone.

If you are up to the task, please notify me so that the efforts of any other volunteers can be coordinated or marshaled in other endeavors.

Very truly yours,

Dr. Eduardo M. Rivera

UNITED STATES TREASURY DEPARTMENT

BUREAU OF INTERNAL REVENUE

Office of Internal Revenue,

THE

WORK AND JURISDICTION

OF THE

BUREAU OF INTERNAL REVENUE

PREPARED UNDER THE DIRECTION

OF THE

COMMISSIONER OF INTERNAL REVENUE

1948

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THE WORK AND JURISDICTION

OF THE

BUREAU OF INTERNAL REVENUE

PREFACE

The collection of the internal revenue to defray the expenses and obligations of the United States Government is an enormous undertaking. The magnitude of the job almost defies description. Within the span of a man's life, the expenditures of the Federal Government for any one year soared from a few hundred million to over one hundred billion dollars. The collection of present taxes annually from the American people is the greatest peacetime financial operation of all time. This tremendous undertaking can be reasonably accomplished only by an adequate force of trained employees operating as efficiently and economically as is possible under the circumstances.

Taxes are the lifeblood of government. An enforcement program commensurate with the magnitude of the statutory responsibilities is imperative in order to collect the revenue levied by Congress, as well as to preserve the respect of the people for the Federal internal revenue system. The process of collecting money under statutory and constitutional limitations differs greatly from that of spending money. A commendable economy in one branch of the Government might be a wholly mistaken sense of economy in relation to the revenue service. The resulting loss in revenue collected would represent a sum many times greater than the amount supposed to be saved.

The simple facts will speak for themselves. There are here included some tables of figures designed to convey an accurate impression of the fiscal status and the revenue necessities of the Federal Government. None may gain a true perspective or comprehension of the Bureau's problem without this factual foundation.

Table I shows the Federal debt, the Federal expenditures, the internal revenue collections, the cost of collecting the internal revenue, etc., for each fiscal year from 1866 to 1947—a period of over 80 years. A thoughtful perusal of this table should be required reading for every citizen of the United States.

Table II shows a general break-down of all internal revenue collections for the 21-year period 1927–1947. It gives a bird's-eye view of the range, as well as the growth, of our inland system of taxation. It recalls that during the depression years the income tax was by comparison a disappointing revenue producer and greater resort was had to sales and consumption taxes.

Table III gives the number of income, profits, estate, and gift tax returns filed for the past 21 years, and the number of Bureau employees for the same period. All other types of internal revenue returns are ignored in Table III in order not to make the discussion appear too belabored. This data alone gives a fair conception of the

tremendous administrative duty of examination and determination of correct tax liabilities. It is a matter of common knowledge that all taxpayers do not file correct returns. The investigative and tax determining activities not only pay for themselves many times over but also hold the standards high for the entire taxpaying public.

Table IV reveals the astounding fact that the *additional* taxes resulting from field examinations of income, profits, estate, and gift tax returns *alone* amount to several times the total cost of the entire Bureau of Internal Revenue. All other phases of internal revenue administration may be regarded as rendered free of cost. This proves conclusively that the size of the Bureau's enforcement personnel, with respect to its revenue productivity, has not even approached the saturation point. So far as taxes on World War II incomes are concerned, the point at which an increase in examining agents would produce diminishing revenue yield is not yet in sight.

TABLE I.—*Table showing Federal debt, expenditures, national income, internal revenue collections, cost of collection, population, etc., for fiscal years 1866–1947*

Fiscal year	Gross Federal debt (as of June 30)	Federal expenditures	National income (calendar year)	Internal revenue collections	Collection expenses	Cost of collecting $100	Population of United States	Gross Federal debt per capita	National income per capita (calendar year)	Internal revenue taxes per capita
1866	$2,755,763,929	$520,809,417		$309,226,813	$7,689,700.46	$2.47	35,771,643	$77.69		$8.669
1867	2,650,168,223	357,542,675		266,027,537	8,982,686.03	3.38	36,483,148	73.19		7.265
1868	2,583,446,456	377,340,285		191,087,589	9,327,301.74	4.88	37,194,653	69.87		5.118
1869	2,545,110,590	322,865,278		158,356,461	6,785,477.00	4.59	37,906,158	67.41		4.198
1870	2,436,453,269	309,653,561		184,899,756	8,241,514.24	3.92	38,655,016	63.19		4.768
1871	2,322,052,141	292,177,188		143,098,154	8,408,634.29	5.30	39,814,757	58.70		3.597
1872	2,209,990,838	277,517,963		130,642,178	6,522,774.44	4.36	40,974,498	54.44		3.194
1873	2,151,210,345	290,345,245		113,729,314	6,620,230.63	4.69	42,134,239	51.62		2.694
1874	2,159,932,730	302,633,873		102,409,785	5,948,477.85	4.40	43,293,980	50.47		2.360
1875	2,156,276,649	274,623,393		110,007,494	5,317,924.11	3.89	44,453,721	49.06		2.476
1876	2,130,845,778	265,101,085		116,700,732	4,775,000.00	4.71	45,613,462	47.21		2.560
1877	2,107,759,903	241,334,475		118,630,408	4,171,495.00	3.50	46,773,203	45.47		2.535
1878	2,159,418,315	236,964,327		110,581,625	4,056,410.00	3.75	47,932,945	45.37		2.309
1879	2,298,912,643	266,947,884		113,561,611	4,205,632.18	3.70	49,092,687	47.05		2.311
1880	2,090,908,872	267,642,958		124,009,374	4,505,640.73	3.63	50,262,382	41.69		2.467
1881	2,019,285,728	260,712,888		135,264,386	5,054,026.48	3.60	51,541,575	39.35		2.624
1882	1,856,915,644	257,981,440		146,497,596	5,107,481.48	3.50	52,820,768	35.37		2.774
1883	1,721,958,918	265,408,138		144,720,369	5,105,957.09	3.50	54,099,961	32.07		2.672
1884	1,625,307,444	244,126,244		121,586,073	5,100,451.84	4.20	55,379,154	29.60		2.196
1885	1,578,551,169	260,226,935		112,498,726	4,455,430.27	3.9	56,658,347	28.11		1.984
1886	1,555,659,550	242,483,139		116,805,936	4,299,485.28	3.6	57,937,540	27.10		2.018
1887	1,465,485,294	267,932,181		118,823,391	4,065,148.87	3.4	59,216,733	24.97		2.007
1888	1,384,631,656	267,924,801		124,296,872	3,978,283.39	3.2	60,495,927	23.09		2.055
1889	1,249,470,511	299,288,978		130,881,514	4,185,728.65	3.2	61,775,121	20.39		2.119
1890	1,122,396,584	318,040,711		142,606,706	4,095,110.80	2.82	63,056,438	17.92		2.261
1891	1,005,806,561	365,773,904		145,686,250	4,205,655.49	2.88	64,361,124	15.75		2.269
1892	968,218,841	345,023,331		153,971,072	4,315,046.26	2.8	65,665,810	14.88		2.343
1893	961,431,766	383,477,953		161,027,624	4,219,739.36	2.62	66,970,496	14.49		2.404
1894	1,016,897,817	367,525,281		147,111,233	3,975,904.00	2.7	68,275,182	15.04		2.156
1895	1,096,913,120	356,195,298		143,421,672	4,127,601.16	2.81	69,579,868	15.91		2.059
1896	1,222,729,350	352,179,446		146,762,865	4,086,292.47	2.78	70,884,554	17.40		2.071
1897	1,226,793,713	365,774,159		146,688,574	3,848,469.49	2.62	72,189,240	17.14		2.031
1898	1,232,743,063	443,368,583		170,900,642	3,907,010.50	2.29	73,493,926	16.90		2.325
1899	1,436,700,704	605,072,179		273,437,162	4,591,754.90	1.68	74,798,612	19.33		3.656
1900	1,263,416,913	520,860,847		295,327,927	4,653,687.74	1.58	76,129,408	16.56		3.879
1901	1,221,572,245	524,616,925		307,180,664	4,749,220.44	1.55	77,747,402	15.71		3.947
1902	1,178,031,357	485,234,249		271,880,122	4,603,887.82	1.7	79,365,396	14.89		3.426
1903	1,159,405,913	517,006,127		230,810,124	4,771,188.50	2.07	80,983,390	14.40		2.849

TABLE I.—*Table showing Federal debt, expenditures, national income, internal revenue collections, cost of collection, population, etc., for fiscal years 1866–1947*—Continued

Fiscal year	Gross Federal debt (as of June 30)	Federal expenditures	National income (calendar year)	Internal revenue collections	Collection expenses	Cost of collecting $100	Population of United States	Gross Federal debt per capita	National income per capita (calendar year)	Internal revenue taxes per capita
1904	$1,136,259,016	$583,659,900		$232,904,119	$4,619,309.52	$1.98	82,601,384	13.88		$2.820
1905	1,132,357,095	567,278,914		234,095,741	4,705,296.32	2.01	84,219,378	13.60		2.781
1906	1,142,522,970	570,202,278		249,150,213	4,727,170.11	1.9	85,837,392	13.50		2.902
1907	1,147,178,193	579,128,842		269,666,773	4,875,745.66	1.81	87,455,366	13.33		3.083
1908	1,177,690,403	659,196,320		251,711,127	4,830,698.65	1.92	89,073,360	13.46		2.825
1909	1,148,315,372	693,743,885		246,212,644	4,975,238.75	2.02	90,691,354	12.91		2.715
1910	1,146,939,969	693,617,065		289,933,519	5,044,502.60	1.74	92,267,080	12.69		3.143
1911	1,153,984,937	691,201,512		322,529,201	5,411,658.98	1.68	93,682,189	12.28		3.443
1912	1,193,838,505	689,881,334		321,612,200	5,509,983.94	1.71	95,097,298	12.48		3.382
1913	1,193,047,745	724,511,963		344,416,966	5,484,654.61	1.59	96,512,407	12.26		3.569
1914	1,188,235,400	735,081,431		380,041,008	5,779,329.72	1.52	97,927,516	12.00		3.881
1915	1,191,264,068	760,586,802		415,669,646	6,804,688.77	1.64	99,342,625	11.83		4.184
1916	1,225,145,568	734,056,202		512,702,029	7,199,163.32	1.40	100,757,735	11.96		5.089
1917	2,975,618,585	1,977,681,751		809,366,208	7,699,031.08	.95	102,172,845	28.57		7.922
1918	12,243,628,719	12,696,702,471		3,186,034,312	12,003,214.07	.33	103,587,955	115.65		35.708
1919	25,482,034,419	18,514,879,955	$67,700,000,000	4,315,284,979	20,573,771.52	.53	105,003,065	240.09	$644	36.667
1920	24,299,321,467	6,403,343,841	69,800,000,000	5,405,031,575	27,037,134.50	.50	106,418,175	228.33	655	50.914
1921	23,977,450,553	5,115,927,690	52,800,000,000	4,596,425,981	33,174,309.17	.72	107,833,284	221.10	489	42.612
1922	22,963,381,708	3,372,607,900	60,600,000,000	3,213,253,257	34,286,651.42	1.07	109,743,000	208.97	552	29.136
1923	22,349,707,365	3,294,627,529	70,000,000,000	2,624,472,761	36,501,062.94	1.39	111,268,000	200.10	629	23.562
1924	21,250,812,989	3,048,677,965	70,100,000,000	2,795,157,036	34,676,688.11	1.24	112,686,000	186.86	622	24.813
1925	20,516,193,888	3,063,105,332	74,800,000,000	2,589,175,892	37,266,573.16	1.44	114,104,000	177.82	655	22.647
1926	19,643,216,315	3,097,611,823	76,900,000,000	2,837,639,377	34,948,483.37	1.23	115,523,000	167.70	665	24.549
1927	18,511,906,932	2,974,029,674	76,400,000,000	2,869,414,342	32,967,764.17	1.15	116,943,000	156.05	653	24.505
1928	17,604,293,201	3,103,264,855	80,200,000,000	2,794,971,223	32,599,845.35	1.17	118,364,000	146.69	677	23.575
1929	16,931,088,484	3,298,859,486	83,326,000,000	2,938,019,372	34,377,082.59	1.17	119,788,000	139.40	695	24.535
1930	16,185,309,831	3,440,268,884	68,858,000,000	3,039,295,014	34,352,063.41	1.13	121,213,000	131.49	568	25.081
1931	16,801,281,492	3,651,515,712	54,479,000,000	2,429,781,016	33,997,785.84	1.40	124,070,000	135.37	439	19.571
1932	19,487,002,444	4,535,147,138	39,963,000,000	1,561,006,334	33,870,903.62	2.17	124,822,000	155.93	320	12.479
1933	22,538,672,560	3,863,544,922	42,322,000,000	1,604,423,957	30,031,722.98	1.85	125,693,000	179.21	336	12.887
1934	27,053,141,414	6,011,083,254	49,455,000,000	2,640,603,828	28,826,225.73	1.25	126,425,000	213.65	391	18.199
1935	28,700,892,625	7,009,875,312	55,719,000,000	3,277,690,028	42,719,338.00	1.54	127,172,000	225.07	438	21.806
1936	33,778,543,494	8,665,645,422	64,924,000,000	3,512,851,608	48,065,039.27	1.39	128,429,000	263.01	505	26.851
1937	36,424,613,732	8,177,408,756	71,513,000,000	4,332,140,103	51,797,735.44	1.12	129,337,000	285.41	552	35.977
1938	37,164,740,315	7,238,822,158	64,200,000,000	5,287,318,437	58,204,050.43	1.03	130,200,000	281.80	491	43.462
1939	40,439,532,411	8,707,091,581	70,829,000,000	4,658,220,847	58,662,968.60	1.13	131,173,000	308.29	539	39.501
1940	42,967,531,038	8,998,189,706	77,574,000,000	4,765,422,255	59,675,518.41	1.12	131,640,000	325.63	589	40.568
1941	48,961,443,536	12,710,629,824	96,857,000,000	6,700,374,249	65,289,527.20	.89	133,212,000	367.54	727	55.326
1942	72,422,445,116	32,396,585,098	122,232,000,000	12,124,264,685	73,805,704.00	.56	134,082,000	537.35	837	96.781
1943	136,696,090,330	78,178,885,241	149,392,000,000	21,040,966,206	98,568,512.00	.44	136,527,000	1,001.55	1,094	162.805
1944	201,003,387,221	93,743,513,214	160,653,000,000	40,425,472,270	129,416,848.00	.32	138,001,000	1,456.54	1,164	289.793
1945	258,682,187,410	100,404,594,686	161,000,000,000	43,852,001,929	144,786,969.38	.33	139,601,000	1,853.01	1,153	312.862
1946	269,422,099,173	65,018,627,991	165,000,000,000	40,310,333,297	174,055,640.00	.43	140,840,000	1,912.96	1,172	286.213
1947	258,286,383,109	42,819,402,958		39,108,385,742	203,916,822.00	.52	144,200,000	1,791.17		271.209

TABLE II.—*Summary of internal revenue collections, by sources (fiscal years 1927 to 1947, inclusive)*

Source	1927	1928	1929	1930	1931	1932	1933
Corporation income taxes	$1,308,012,532.90	$1,291,845,989.25	$1,235,733,256.24	$1,263,414,466.60	$1,026,392,699.02	$629,566,115.55	$394,217,783.93
Individual income taxes	911,939,910.82	882,727,113.64	1,095,541,172.40	1,146,844,763.68	833,647,798.37	427,190,581.99	352,573,620.18
Income taxes withheld							
Excess profits taxes—declared value							
Excess profits taxes—Vinson Act							
Excess profits taxes—Revenue Acts of 1940, 1941, and 1942							
Unjust enrichment taxes							
Total	2,219,952,443.72	2,174,573,102.89	2,331,274,428.64	2,410,259,230.28	1,860,040,497.39	1,056,756,697.54	746,791,404.11
Capital stock tax, total							
Estate tax, total	100,339,851.96	60,087,233.97	61,897,141.48	64,769,625.04	48,078,326.89	47,422,313.00	29,693,061.89
Gift tax, total							4,616,661.96
Liquor taxes, total	21,195,551.96	15,307,796.45	12,776,728.46	11,695,267.67	10,432,064.49	8,721,029.97	43,179,822.44
Tobacco taxes, total	376,170,205.04	396,450,041.03	434,444,543.21	450,339,060.50	444,276,502.62	398,578,618.56	402,739,059.25
Documentary, etc., stamp taxes, total	37,345,551.43	48,829,208.24	64,173,530.84	77,728,669.90	46,953,596.19	32,240,819.57	57,578,061.69
Manufacturers' excise taxes, total	66,829,031.21	51,936,591.28	5,711,550.04				247,786,815.14
Miscellaneous taxes, total	43,850,494.59	43,351,563.82	28,776,452.76	25,353,879.78	18,447,766.64	14,009,564.00	87,454,337.82
Retailers' excise taxes, total							
Employment taxes, total							
Dividends taxes, total							
Agricultural adjustment taxes, total							
Grand total internal revenue receipts	2,865,683,129.91	2,790,535,537.68	2,939,054,375.43	3,040,145,733.17	2,428,228,754.22	1,557,729,042.64	1,619,839,224.30

TABLE II.—*Summary of internal revenue collections, by sources (fiscal years 1927 to 1947, inclusive)*—Continued

Source	1934	1935	1936	1937	1938	1939	1940
Corporation income taxes	$397,515,851.94	$572,117,876.28	$738,522,229.75	$1,056,923,129.52	$1,299,932,071.95	$1,122,540,800.61	$1,120,581,550.75
Individual income taxes	419,509,487.78	527,112,506.42	674,416,074.14	1,091,740,746.47	1,286,311,881.92	1,028,833,796.49	982,017,376.17
Income taxes withheld							
Excess profits taxes—declared value	2,630,615.56	6,560,482.64	14,509,290.47	25,104,607.72	36,569,041.83	27,056,372.81	18,474,201.83
Excess profits taxes—Vinson Act							
Excess profits taxes—Revenue Acts of 1940, 1941, and 1942							
Unjust enrichment taxes				6,073,351.02	6,216,735.52	6,683,334.54	8,536,178.32
Total	819,655,955.28	1,105,790,865.34	1,427,447,594.36	2,179,841,834.73	2,629,029,731.22	2,185,114,304.45	2,129,609,307.07
Capital stock tax, total	80,168,344.13	91,508,121.29	94,942,751.74	137,499,245.53	139,348,566.58	127,203,008.99	132,738,537.17
Estate tax, total	103,985,288.04	140,440,682.34	218,780,753.53	281,635,983.21	382,175,325.84	332,279,613.14	330,886,048.91
Gift tax, total	9,153,076.06	71,671,276.89	160,058,761.47	23,911,783.26	34,698,739.01	28,435,596.98	29,185,118.03
Liquor taxes, total	258,911,332.62	411,021,772.35	505,464,037.10	594,245,086.27	567,978,601.53	587,799,700.68	624,253,156.11
Tobacco taxes, total	425,168,897.04	459,178,625.46	501,165,728.39	552,254,145.22	568,181,967.53	580,159,205.74	608,518,443.59
Documentary, etc., stamp taxes, total	66,580,038.03	43,133,373.45	68,989,885.60	69,919,336.11	46,232,990.72	41,082,839.42	38,681,345.32
Manufacturers' excise taxes, total	390,037,946.74	342,274,677.14	382,776,170.76	449,853,629.72	416,753,516.33	396,891,003.52	447,087,632.49
Miscellaneous taxes, total	96,926,307.97	107,232,339.95	88,498,422.43	98,288,963.39	131,705,649.60	162,179,814.60	165,971,782.58
Retailers' excise taxes, total							
Employment taxes, total			48,278.74	265,745,307.84	742,660,225.97	740,428,865.06	833,520,975.51
Dividends taxes, total	50,229,122.97	961,479.73	398,790.27				
Agricultural adjustment taxes, total	371,422,885.64	526,222,358.24	71,637,206.70				
Grand total internal revenue receipts	2,672,239,194.52	3,299,435,572.18	3,520,208,381.09	4,653,195,315.28	5,658,765,314.33	5,181,573,952.58	5,340,452,346.78

Source	1941	1942	1943	1944	1945	1946
Corporation income taxes	$1,851,987,990.58	$3,069,273,346.07	$4,520,851,709.88	$5,284,145,852.31	$4,879,715,380.86	$4,639,949,184.13
Individual income taxes	1,417,655,126.59	3,262,800,389.86	5,943,916,978.59	10,437,570,433.53	8,770,094,034.15	8,846,947,304.29
Income taxes withheld			686,015,010.47	7,823,434,977.46	10,264,219,340.18	9,857,588,860.73
Excess profits taxes—declared value	25,919,566.85	51,237,371.60	82,011,996.02	136,979,571.41	143,797,827.17	91,129,766.65
Excess profits taxes—Vinson Act	2,156,717.81	981,717.42	420,488.82	39,036.47		
Excess profits taxes—Revenue Acts of 1940, 1941, and 1942	164,308,967.23	1,618,188,950.87	5,063,863,613.73	9,345,198,293.03	11,003,519,622.76	7,822,488,154.16
Unjust enrichment taxes	9,095,561.51	4,401,767.86	1,808,294.05	433,723.98	179,995.24	34,881.98
Total	3,471,123,930.57	8,006,883,543.68	16,298,888,091.56	33,027,801,888.19	35,061,526,200.36	31,258,138,151.94
Capital stock tax, total	166,652,639.88	281,900,134.89	328,794,970.85	380,702,005.85	371,999,130.71	352,120,833.35
Estate tax, total	355,194,033.49	340,322,905.08	414,530,598.81	473,465,605.12	596,137,494.42	629,600,697.45
Gift tax, total	51,863,714.03	92,217,383.01	32,965,078.68	37,744,731.75	46,917,582.55	47,231,604.85
Liquor taxes, total	820,056,178.33	1,048,516,706.56	1,423,646,456.44	1,618,775,155.93	2,309,865,790.07	2,526,164,685.67
Tobacco taxes, total	698,076,890.87	780,982,215.72	923,857,283.63	988,483,236.89	932,144,822.32	1,165,519,283.14
Documentary, etc., stamp taxes, total	39,056,966.09	41,702,167.00	45,155,285.67	50,799,687.27	65,527,514.65	87,676,396.17
Manufacturers' excise taxes, total	617,353,891.64	771,902,258.51	504,749,103.30	503,462,170.36	782,510,639.70	922,670,740.98
Miscellaneous taxes, total	224,873,672.38	417,912,235.12	734,828,724.67	1,076,921,051.06	1,430,476,064.11	1,490,100,860.46
Retailers' excise taxes, total		80,167,124.46	165,265,869.35	225,232,264.46	424,104,924.53	492,046,068.83
Employment taxes, total	925,856,460.38	1,185,361,843.69	1,498,705,033.59	1,738,372,435.89	1,779,177,412.48	1,700,827,675.04
Dividends taxes, total						
Agricultural adjustment taxes, total						
Grand total internal revenue receipts	7,370,108,377.66	13,047,868,517.72	22,371,386,496.55	40,121,760,232.77	43,800,387,575.90	40,672,096,997.88

TABLE III.—*Number of income, profits, estate, and gift tax returns filed*

[From Commissioner's Annual Reports]

Fiscal year	Income and excess profits	Estate	Gift	Total	Number of Bureau employees	Number of such returns every year per Bureau employee
1927	4,895,071	12,538	2,523	4,910,132	13,211	372
1928	5,229,652	9,373	----------	5,239,025	12,914	406
1929	5,199,916	9,719	----------	5,209,635	12,273	424
1930	5,288,373	10,308	----------	5,298,681	11,979	442
1931	5,027,739	9,816	----------	5,037,555	11,833	426
1932	4,528,335	8,183	----------	4,536,518	11,716	387
1933	5,166,091	8,504	1,710	5,176,305	11,524	449
1934	4,933,376	11,210	3,619	4,948,205	11,216	441
1935	5,295,352	13,133	11,410	5,319,895	16,523	322
1936	5,813,499	13,252	22,590	5,849,341	17,054	343
1937	6,735,454	15,244	17,046	6,767,744	21,148	320
1938	7,616,196	17,794	16,601	7,650,591	22,045	347
1939	7,132,871	18,265	13,614	7,164,750	22,623	317
1940	8,988,412	18,908	14,435	9,021,755	22,423	402
1941	16,150,496	19,044	17,369	16,186,909	27,230	594
1942	27,773,079	19,633	30,048	27,822,760	29,065	957
1943	40,507,314	18,430	23,872	40,549,616	36,338	1,116
1944	52,613,422	17,205	20,772	52,651,399	46,171	1,140
1945	58,064,679	17,927	22,939	58,105,545	49,814	1,166
1946	57,061,723	19,704	23,554	57,104,981	59,693	957
1947	65,884,140	23,209	27,046	65,934,395	52,830	1,248

TABLE IV.—*Comparison of additional income, profits, estate, and gift tax assessments (excluding jeopardy and duplicate assessments, penalties, and interest) resulting from investigation of returns, with total expenses of Bureau, over the 20-year period 1927 to 1947.*

[From Commissioner's Annual Reports]

Fiscal year	Additional income tax assessments	Additional profits tax assessments	Additional estate and gift tax assessments [1]	Total	Total expenses of the Bureau	Per cent of entire Bureau cost to additional income, profits, estate, and gift tax assessments
1927	$296,647,175	----------	----------	----------	$32,967,764	----------
1928	313,545,124	----------	----------	----------	32,599,845	----------
1929	315,225,300	----------	[2] $20,802,611	$336,027,911	34,377,083	10.23
1930	227,446,331	----------	[2] 20,169,290	247,615,621	34,352,063	13.87
1931	315,039,632	----------	25,109,774	340,149,406	33,997,786	9.99
1932	277,669,594	----------	18,133,624	295,803,218	33,870,904	11.45
1933	287,078,165	----------	[2] 18,988,813	306,066,978	30,031,723	9.81
1934	255,244,564	----------	[2] 13,323,647	268,568,211	28,826,226	10.73
1935	240,634,483	----------	21,610,254	262,244,737	42,719,338	16.29
1936	351,703,040	----------	33,861,950	385,564,990	48,065,039	12.47
1937	285,765,138	----------	64,206,203	349,971,341	51,797,735	14.80
1938	262,335,901	----------	62,746,831	325,082,732	58,204,050	17.90
1939	279,487,978	----------	64,262,417	343,750,395	58,662,969	17.07
1940	291,198,664	----------	58,704,365	349,903,029	59,675,518	17.05
1941	269,725,157	----------	64,803,453	334,528,610	65,289,527	19.52
1942	292,702,255	$7,837,371	77,380,886	377,920,512	73,805,704	19.53
1943	341,537,908	80,900,385	72,307,104	494,745,397	98,568,512	19.92
1944	[3] 412,812,975	150,424,136	102,384,608	665,621,719	129,416,848	19.44
1945	[3] 495,321,979	253,108,152	104,816,345	853,246,476	144,786,969	16.97
1946	[3] 691,343,390	417,455,586	98,707,816	1,207,506,792	174,055,640	14.41
1947	[3] 1,291,096,745	451,293,046	104,291,137	1,846,680,928	203,916,822	11.04

[1] Not available for 1927 and 1928.

[2] Includes jeopardy, penalties, and interest.

[3] In the assessments of additional income tax for the fiscal years 1944 to 1947 there are included indeterminate amounts of income tax deficiencies automatically resulting under the provisions of the Code from decreases in excess profits tax liabilities.

TABLE II.—*Summary of internal revenue collections, by sources (fiscal year 1947)*—Continued

Source	*1947*
Corporation income taxes	$6,055,095,928.79
Individual income taxes	9,501,015,016.08
Income taxes withheld	9,842,282,259.83
Excess profits taxes—declared value	55,184,793.45
Excess profits taxes—Vinson Act	
Excess profits taxes—Revenue Acts of 1940, 1941, and 1942	3,566,177,957.70
Unjust enrichment taxes	298,088.59
Total	29,020,054,044.44
Capital stock tax, total	1,597,470.22
Estate tax, total	708,793,811.54
Gift tax, total	70,497,262.16
Liquor taxes, total	2,474,763,442.42
Tobacco taxes, total	1,237,768,301.78
Documentary, etc., stamp taxes, total	79,977,968.41
Manufacturers' excise taxes, total	1,425,394,708.85
Miscellaneous taxes, total	1,550,947,269.58
Retailers' excise taxes, total	514,226,646.67
Employment taxes, total	2,024,364,815.56
Dividends taxes, total	
Agricultural Adjustment taxes, total	
Grand total internal revenue receipts	39,108,385,741.63

THE OFFICE OF COMMISSIONER OF INTERNAL REVENUE

The Bureau of Internal Revenue, United States Treasury Department, is the entire organization built around the statutory office of the Commissioner of Internal Revenue for the administration of the internal revenue laws. For purposes of this discussion, it also includes the offices of the 64 collectors of internal revenue. (See accompanying Organization Chart of the Bureau.) The statutory duties of the Commissioner (or Bureau) may be classified in two broad categories.

1. *Service.*—These activities may be described as the rendering of assistance to taxpayers in the preparation of their returns and the servicing of all accounts. It includes the preparation and circulation of all forms and instructions; the handling of receipts; the maintenance of accurate records respecting each taxpayer's account; and the establishment of controls over the collectors' offices. These services and office routines are essential in any event, and a large force is necessary for this purpose alone. However, tax administration is more than the mechanics of collecting revenue voluntarily paid. It also requires verification.

2. *Verification and enforcement.*—Experience has taught that the Bureau can not rely solely upon voluntary compliance with the revenue laws. The concept of enforcement, in its broad sense, includes the following operations: The ascertainment of all the pertinent facts of a case by lawful investigative processes; the drawing of fair and reasonable conclusions of fact from all the evidence; the conscientious application of the law to the facts and conclusions of fact so found, for the purpose of determining the correct amount of tax liability; the punishment of wrongdoers according to the sanctions provided by law; the development of procedures within the Bureau, of both original and appellate nature, with a view of granting the taxpayer a competent and impartial hearing or consideration of his case; and the adoption of a sound litigating policy in respect of important principles of taxation under the revenue statutes.

Section 57 of the Internal Revenue Code provides that, as soon as practicable after the income return is filed, the Commissioner shall examine it, and shall determine the correct amount of the tax. See section 824 (estate tax), section 1010 (gift tax), and section 3612, Internal Revenue Code. The statutory responsibility of the Bureau in its administration of the internal revenue laws is to determine and collect from every taxpayer "the correct amount of the tax."

Commissioner of Internal Revenue.

AN HISTORICAL REVIEW

OF THE

STATUTORY JURISDICTION AND ADMINISTRATIVE PROBLEMS

OF THE

COMMISSIONER OF INTERNAL REVENUE

BY

AUBREY R. MARRS

of the

Bureau of Internal Revenue

TABLE OF CONTENTS

INTRODUCTION

Many ill-founded judgments may be traced to the effect of generalities upon minds unprepared by detailed facts. An historical review of the origin and development of the administrative functions in respect of the internal revenue will serve to clarify the understanding and promote better administration. A brief "History of the Internal Revenue Service, 1791–1929" (12 pages), was issued in 1930, but did not purport to treat of the statutory powers and duties of the office of Commissioner of Internal Revenue. This treatise, however, purports to be primarily a functional history of the office of Commissioner of Internal Revenue.

It is sometimes said that there is no statutory "Bureau of Internal Revenue." This is not a sound view to take of the evidence. A comparison of the manner of establishment of the Bureau of Customs with that of the Bureau of Internal Revenue will aid the understanding. The Act of March 3, 1849 (9 Stat., 396, section 12), enacted that "an officer" be appointed by the President, with Senate confirmation, "in the Department of the Treasury, as one of its bureaus," to be called the Commissioner of Customs, who shall perform the duties now devolved by law on the First Comptroller, "relating to the receipts from customs and the accounts of collectors and other officers of the customs, or connected therewith." The Secretary was commanded by the Act to transfer from the office of the First Comptroller such clerks as may be necessary "to the bureau of the Commissioner of Customs." By that language, an *officer* was to be one of the Bureaus of the Treasury Department; and later it is alluded to as the Bureau of the Commissioner of Customs. Undoubtedly the above language is adequate to give statutory standing to the Bureau of Customs, although it was not established as such by that name. The President was to appoint an *officer* in the Treasury, "*as* one of its bureaus."

When the Act of July 1, 1862 (12 Stat., 432), enacted that "an office is hereby created in the Treasury Department to be called the Office of the Commissioner of Internal Revenue," said *office* was established by positive statutory language. Continuing, when the statute authorized the President to appoint "a Commissioner of Internal Revenue, * * * who shall be charged, and hereby is charged, under the direction of the Secretary of the Treasury, * * * with the general superintendence of his office," there is provided an *officer* to occupy and superintend said *office*. Neither the office nor the officer was designated in the statute as one of the bureaus of the Treasury, as was the case with customs. However, by common parlance and understanding of the time, an office of that importance was a bureau. There is tangible proof. The Report of the Secretary of the Treasury (S. P. Chase) on the State of the Finances, dated December 4, 1862, states

> The *Bureau of Internal Revenue* has been organized under the Act of the last session, and is now actually engaged in the labors assigned to *it*. [Italics for emphasis.] (Report on the Finances, volume 19, page 29.)

A few months later, by Act of March 3, 1863 (section 19, 12 Stat., 725), it was provided that the President shall appoint in the Department of the Treasury, with Senate confirmation, *a competent person* who shall be called the Deputy Commissioner of Internal Revenue—

> * * * who shall be charged with such duties *in the bureau of internal revenue* as may be prescribed by the Secretary of the Treasury, or as may be required by law, and who shall act as commissioner of internal revenue in the absence of that officer, and exercise the privilege of franking all letters and documents pertaining to *the office of internal revenue.* [Italics for emphasis.]

In other words, "the office of internal revenue" was "the bureau of internal revenue." Obviously, Congress had intended to establish a bureau of internal revenue, or thought they had.[1] For these reasons, it is submitted that the Bureau of Internal Revenue was established by statute. It is the same thing as the Office of the Commissioner of Internal Revenue. It could have been lawfully given some other appropriate name. It is interesting to note that the annual reports of the Commissioner of Internal Revenue carried the date line "Treasury Department, Office of Internal Revenue," until 1896. It once narrowly escaped having its name changed by law to "Division of Internal Revenue." [2]

The Bureau of Internal Revenue is, therefore, the organization built upon the powers and duties of the Office of the Commissioner of Internal Revenue, and of the Commissioner himself. It is "the office of internal revenue." A working knowledge of the historical development of the Internal Revenue Service will contribute to a better understanding of the organization as now constituted; of its accomplishments past and present; and of what is reasonable to expect of it in the future.

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[1] The Act of June 6, 1872 (1 Stat., 230, 257), speaks of "the clerks and employees in the internal revenue *bureau.*" Also, section 9 of the Act of December 24, 1872 (17 Stat., 401, 403), authorizes the Commissioner to designate one of the heads of division as chief clerk "of the *bureau.*" [Italics for emphasis.] There is statutory reference to the "Bureau of Internal Revenue" in 30 Stat., 26, 450; and in section 3614, Internal Revenue Code.

[2] Executive Order No. 6166 (section 8), dated June 10, 1933; Executive Order No. 6224, July 27, 1933; Executive Order No. 6540, December 28, 1933; and Executive Order No. 6639, March 10, 1934. (U. S. Code, 1934 edition, Title 5, pages 48–50.)

PART 1

FIRST PERIOD, 1789–1802

The first revenue statute of the present National Government was the Act of July 4, 1789, First Congress, first session (1 Stat., 24), which laid a duty on goods, wares, and merchandise imported into the United States. Congress was sitting in the City of New York. To those interested in first principles, the preamble of the Act reads:

SEC. 1. Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares and merchandise imported: * * *

On July 20, 1789, came the second revenue measure of the National Government, imposing duties on the tonnage of all ships or vessels entered in the United States. (1 Stat., 27.)

No administrative organization was, at that time, in existence to collect revenue. There was not even a Department of the Treasury, much less a Commissioner of Customs or a Commissioner of Internal Revenue. Madison's Notes on the Constitutional Convention reveal clearly that the framers of the United States Constitution believed that for some time the principal if not the sole support of the new Government would be derived from customs duties and taxes connected with shipping and importations. Internal taxation would not be resorted to except on infrequent occasions or for special reasons. Therefore, it becomes of interest to know the organization erected to collect the customs, in order the better to understand the early improvisations and the eventual permanent organization erected to collect the internal revenue. In some respects, the one was patterned after the other, especially as regards the present office of collector of internal revenue.

On July 31, 1789 (1 Stat., 29), there were enacted lengthy provisions for collecting the duties then but lately imposed on the tonnage of ships or vessels, and on goods, wares, and merchandise imported into the United States. By this Act, and for the purposes stated, "there shall be established and appointed, districts, ports, and officers, in manner following, to wit: * * *." For example:

SEC. 1. * * * In the State of New York shall be two *districts*, to wit: Sagg Harbour on Nassau or Long Island, and the city of New York, each of which shall be a port of entry. The district of Sagg Harbour shall include all bays, harbours, rivers and shores, within the two points of land, which are called Oyster-Pond Point, and Montauk Point; and a *collector for the district* shall be appointed, to reside at Sagg Harbour, which shall be the only place of delivery in the said district. The district of the city of New York shall include such part of the coasts, rivers, bays and harbours of the said State, not included in the district of Sagg Harbour, and moreover, the several towns or landing places of New Windsor, Newburgh, Poughkeepsie, Esopus, city of Hudson, Kinderhook, and Albany, as ports of delivery only; and a naval officer, *collector* and surveyor for the district shall be appointed, to reside at the city of New York; also two surveyors, one to reside at the city of Albany, and the other at the city of Hudson; and all ships or vessels bound to, or from

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any port of delivery within the last named district, shall be obliged to come to, and enter or clear out at the city of New York.

* * * * * * *

SEC. 5. *And be it further enacted,* That the duties of the respective officers to be appointed by virtue of this Act, shall be as follows: At such of the ports to which there shall be appointed a *collector,* naval officer and surveyor, it shall be the duty of the collector to receive all reports, manifests and documents made or exhibited to him by the master or commander of any ship or vessel, conformably to the regulations prescribed by this act, to make due entry and record in books to be kept for that purpose, all such manifests and the packages, marks and numbers contained therein; to receive the entry of all ships and vessels, and of all the goods, wares and merchandise imported in such ships or vessels, together with the original invoices thereof; to estimate the duties payable thereon, and to endorse the same on each entry; to receive all monies paid for duties, and to take all bonds for securing the payment of duties; to grant all permits for the unlading and delivery of goods, to employ proper persons as weighers, gaugers, measurers and inspectors at the several ports within his district, together with such persons as shall be necessary to serve in the boats which may be provided for securing the collection of the revenue, to provide at the public expense, and with the approbation of the principal officer of the treasury department, storehouses for the safe keeping of goods, together with such scales, weights and measures as shall be deemed necessary, and to perform all other duties which shall be assigned to him by law. It shall be the duty of the naval officer to receive copies of all manifests, to estimate and record the duties on each entry made with the collector, and to correct any error made therein, before a permit to unlade or deliver shall be granted; to countersign all permits and clearances granted by the collector. It shall be the duty of the surveyor to superintend and direct all inspectors, weighers, measurers and gaugers within his district, and the employment of the boats which may be provided for securing the collection of the revenue; to go on board ships or vessels arriving within his district, or to put on board one or more inspectors, to ascertain by an hydrometer, what distilled spirits shall be of Jamaica proof, rating all distilled spirits which shall be of the proof of twenty-four degrees as of Jamaica proof, and to examine whether the goods imported are conformable to the entries thereof; and the said surveyors shall in all cases be subject to the control of the collector and naval officer.

SEC. 6. *And be it further enacted,* That *every collector* appointed in virtue of this Act, in case of his necessary absence, sickness, or inability to execute the duties of his office, *may appoint a deputy, duly authorized under his hand and seal,* to execute and perform on his behalf, all and singular the powers, functions and duties of collector of the district to which he the said principal is attached, who shall be answerable for the neglect of duty, or other misconduct of his said deputy in the execution of the office. [Italics for emphasis.]

This Act did not provide for any central supervisory authority, although certain of the collector's duties recited in section 5, supra, were to be performed "with the approbation of the principal officer of the treasury department." One month later the Treasury Department was created.

Geography has had a great influence upon legal remedies. In the early days of the Republic, delays in communication made it both natural and imperative that the enforcement activities and the authority to prosecute for violations of the revenue laws be placed in the locality where the offenses were committed. The field forces detected the frauds upon the revenue, reported the violations to the district attorneys, and caused suits for the penalties to be commenced. The Act of July 31, 1789, supra, relating to the customs, being the first statute of the National Government providing for an organization to collect revenue, contains the typical provisions for enforcement of such a law and prosecution of violations. The officers to be appointed or employed under the Act are given authority to break open packages, to board vessels, to make searches and to seize goods.

As to the mode of prosecuting and recovering penalties and forfeitures, section 36, at that early date, spells out the prosecuting function of the collectors:

> SEC. 36. And be it further enacted, That all penalties accruing by *any* breach of this Act, shall be sued for and recovered with costs of suit, in the name of the United States, in any court proper to try the same, *by the collector of the district where the same accrued*, and not otherwise, unless in cases of penalty relating to an officer of the customs; and such collector shall be, and hereby is authorized and directed to *sue* for and *prosecute* the same to *effect*, and to distribute and pay the sum recovered, after first deducting all necessary costs and charges, according to law. * * * (1 Stat., 47.) [Italics for emphasis.]

Any private citizen could also assist the sovereign in the enforcement of the law by making information of violations to the district attorneys, and through *qui tam* proceedings could take a hand in convicting and punishing the guilty. As later appears, the situation in these respects was the same in both customs and internal revenue.

An Act to establish the Treasury Department, approved September 2, 1789 (1 Stat., 65), enacted that there shall be a "Department of Treasury" in which shall be the following officers, namely: a Secretary of the Treasury, to be deemed head of the department; a Comptroller, an Auditor, a Treasurer, a Register, and an assistant to the Secretary of the Treasury, which assistant shall be appointed by the said Secretary. The duties prescribed for these officials contain the origins of the internal revenue service. This was long before the creation in 1862 of the office of the Commissioner of Internal Revenue. The duties of the Secretary, the Comptroller, and the Auditor relate in part to revenue matters.

To summarize the language of the statute, it was the duty of the Secretary to digest and prepare plans for the improvement and management of the revenue; to prepare and report estimates of the public revenue; to superintend the collection of the revenue; to decide on the forms of keeping and stating accounts and making returns; and generally to perform all such services relative to the finances as he shall be directed to perform. These duties have obtained in practically the same verbiage to this day. (United States Code, title 5, section 242.)

The duties of the Comptroller were, as they seem to relate to the revenue, to superintend the adjustment and preservation of the public accounts; to examine all accounts settled by the Auditor, and certify the balances arising thereon to the Register; to report to the Secretary the official forms of all papers to be issued in the different offices for collecting the public revenue, and the manner and form of keeping and stating the accounts of the several persons employed therein. The statute further provided:

> He shall moreover provide for the regular and punctual payment of all monies which may be collected, and shall direct prosecutions for all delinquencies of officers of the revenue, and for debts that are, or shall be due to the United States.

It was the duty of the Auditor to receive all public accounts, and after examination to certify the balance, and transmit the accounts with the vouchers and certificate to the Comptroller for his decision thereon: Provided, *That if any person whose account shall be so audited, be dissatisfied therewith, he may within six months appeal to the Comptroller against such settlement.*

The combined duties of the Comptroller and the Auditor, as they related to the revenue, were the early prototype of the present duties of the office of Commissioner of Internal Revenue or the Bureau of Internal Revenue. The Comptroller appears to have held whatever disciplinary supervision existed over "officers of the revenue" and could direct prosecutions for their delinquencies. Accounts were "*settled*" by the Auditor, and the word "settled" seems to carry the connotations of both strict and discretionary conclusions, as it does today. A dissatisfied taxpayer could within six months appeal to the Comptroller "against such settlement."

The first *internal* revenue statute was enacted March 3, 1791, but before discussing its provisions, it is advisable to complete the revenue organization at the seat of the National Government by analyzing the Act of May 8, 1792.

The Act of May 8, 1792 (1 Stat., 279), being an Act making alterations in the Treasury Department, did several interesting things. The implications of its provisions, which can only be surmised at this late date, may best be drawn after quoting certain provisions of the statute:

> SEC. 6. *And be it further enacted*, That the Secretary of the Treasury shall direct the superintendence of the collection of the duties on impost and tonnage as he shall judge best. That the present office of assistant to the Secretary of the Treasury, be abolished, and that instead thereof there be an officer in the department of the treasury, to be denominated *Commissioner of the Revenue*, who shall be charged with superintending, under the direction of the head of the department, the collection of the *other* revenues of the United States, and shall execute such other services, being conformable to the constitution of the department, as shall be directed by the Secretary of the Treasury. That the compensation of the said commissioner shall be a salary of one thousand nine hundred dollars per annum. [Italics for emphasis.]
>
> SEC. 7. *And be it further enacted*, That in every case of an account or claim not finally adjusted, upon which the present comptroller of the treasury, as auditor, may have decided, it shall be the duty of the commissioner of the revenue, and of the auditor of the treasury, finally to adjust the same, and in case of disagreement between the said commissioner and auditor, the decision of the attorney general shall be final.

It will be remembered that the Act of July 31, 1789, supra, establishing the organization for collecting the duties on imports and tonnages, antedated the Act of September 2, 1789, supra, establishing the Treasury Department and creating the office of Secretary. By the latter Act the Secretary was given power "to superintend the collection of the *revenue*," but apparently the word "revenue" was not definite enough to satisfy the collectors of customs duties. The ambiguity was settled in the Act of May 8, 1792, by expressly providing that the Secretary shall direct the superintendence of the collection of the duties on impost and tonnage *as he shall judge best.* We have seen that the Act of September 2, 1789, also created the office of "an assistant to the Secretary of the Treasury, which assistant shall be appointed by the said Secretary." The duties of the assistant were not specified except in case of a vacancy in the office of Secretary. By that Act the duties of the Comptroller and Auditor made of them the principal operating revenue officials at the seat of the National Government. However, the assistant must have gradually exercised the Secretary's powers of superintendence over the revenue. As section 7, Act of May 8, 1792, above quoted, plainly reveals, the then present Comptroller had shortly before been the Auditor, which practically disqualified him as the official to hear

the statutory appeals from his settlements while Auditor. The Act of May 8, 1792, abolished the office of Assistant to the Secretary, and put in its place an officer to be denominated "Commissioner of the Revenue." This was the progenitor of the present Commissioner of Internal Revenue. He was charged with *superintending*, under the *direction* of the Secretary, the collection of the "other revenues," meaning the revenues *other than* duties on impost and tonnage. Since the Secretary now had statutory authority to superintend customs "as he shall judge best," it is not improbable that he assigned such duties also to the Commissioner of the Revenue.[1] In revenue matters he was the superior of the Comptroller and the Auditor.

In the beginning, matters of detail in revenue administration were handled by correspondence and circulars over the Secretary's signature. To illustrate, a photostat of a Treasury Department circular is here included.

(CIRCULAR.)

Treasury Department,

AUGUST 27th, 1792.

Sir,

IT would be of uſe in regard to the Return of exports, which is tranſmitted quarterly to this Office by the Collectors, if the exported articles were uniformly arranged in alphabetic order.

With a view to this, I encloſe you a form of ſuch an alphabetical arrangement, and requeſt that for the future you will have the articles of exports inſerted in the ſaid Return, agreeably to that form; expreſſing the different quantities of each article as therein preſcribed. In all other reſpects the form of the Return of Exports will remain as heretofore.

I have to deſire that you will furniſh me with a monthly abſtract of all Licenſes which ſhall be granted to coaſting and fiſhing veſſels in your diſtrict, to be forwarded after the expiration of every month. The annexed form will ſhew the particulars to be inſerted. It is of courſe not required that copies or duplicates of Licenſes ſhould be tranſmitted to the Treaſury, as has been done in ſome inſtances.

A difference of opinion between the Collectors and Superviſors has occurred in regard to the ſeventh ſection of the Act "concerning the Duties on Spirits diſtilled within the United States, &c." The true conſtruction is, that the abatement of two per cent. for leakage, is to be made, on ſecuring the Duty at the end of the quarter from the whole quantity diſtilled during the preceding three months—and hence it will be neceſſary that in caſes of exportation, the Drawbacks on diſtilled Spirits be adjuſted with an eye to this allowance.

A doubt has ariſen on the 35th, or more properly the 36th Section of the Collection Law, whether molaſſes is to be conſidered as within the meaning of that Section. I am of opinion, it is, and that the allowance of two per cent. for leakage ought to be extended to that article.

With great conſideration,

I am, Sir,

Your obedient Servant,

A Hamilton

[1] The Commissioner was assigned a variety of duties. For example, he was instructed by the Secretary to receive bids for building a lighthouse on Cape Hatteras. (*United States* v. *Worrall* (1798), 2 Dallas, 384.)

The customs organization has been continuous both as to existence and general character of work. The Internal Revenue had a checkered early career, marked by restricted operations and long lapses, with occasional periods of intense activity. It was not until the sixteenth amendment to the United States Constitution, and the broad enabling Acts thereunder, that the Internal Revenue organization assumed its present form and prominent position in the fiscal affairs. Now we return to the early enactments.

THE FIRST INTERNAL REVENUE ACT

Alexander Hamilton, Secretary of the Treasury, made his famous "Report on Public Credit" on January 9, 1790. Hamilton's greatest service to his countrymen was the firm establishment of public credit as regards the new National Government. One of the means used by him to accomplish his purpose was a system of revenue by which the duties on importations of foreign luxuries were increased, and supplemented by *internal* duties on spirits distilled within the United States from either foreign or domestic materials. Secretary Hamilton dryly remarked that the chief outlines of the plan were not original, "but it is no ill recommendation of it that it has been tried with success." (Reports of the Secretary of the Treasury, volume 1, page 22, seq.) The first resort by the National Government to *internal* taxation was, therefore, occasioned by the exigencies of the public credit.

The first *internal* revenue statute of the United States Government laid duties upon spirits distilled within the United States. (Act of March 3, 1791, 1 Stat., 199, 202.) The United States was divided into 14 *districts*, each consisting of one State, but subject to alterations by the President from time to time, which districts were subdivided into *surveys* of *inspection*. The President was authorized to appoint, with the advice and consent of the Senate, a *supervisor* to each *district*, and as many *inspectors to each survey* therein as he shall judge necessary, *placing the latter under the direction of the former*. The "supervisor of the revenue" was a fiscal officer and bore a striking resemblance to the present collector of internal revenue. The duties laid on spirits distilled within the United States were collected "under the management of the supervisors of the revenue" (section 16).

It was further provided that the duties on spirits distilled within the United States shall be paid or secured previous to the removal thereof from the distilleries at which they are made. The supervisor of each district was required to appoint "proper officers" to attend to distilleries within the district (section 18).

The same Act of March 3, 1791, by section 21, laid a duty upon private stills employed in distilling spirits from materials of the growth or production of the United States, in any other place than a city, town, or village. The duties on stills were also "collected under the management of the supervisor in each district," who appointed and assigned *proper officers* for the surveys of the stills and the admeasurement thereof, and the *collection of the duties* thereon (section 23). These "proper officers" attending to the distilleries and the private stills came to be called "collectors of revenue" since they physically collected the taxes. For example, in the Act of June 5, 1794 (1 Stat., 379), section 13 authorizes the President to make additional allowances "to the inspectors and collectors of revenue."

These "collectors of revenue" were subordinate to the supervisors and the inspectors. Section 12 of the same Act states that it shall be lawful for supervisors and inspectors of the revenue, at their own expense, to appoint "deputies" to aid them in the execution of their duties, in cases of occasional and necessary absence, or of sickness, *and not otherwise.* This is probably the first place where the word "deputy" is used in connection with internal revenue. This "deputy," however, seems more in the nature of a first assistant than a "collector of revenue."

The second internal revenue tax was imposed by the Act of June 5, 1794,[1] which laid "duties" upon carriages for the conveyance of persons. Section 2 of the Act provided that these duties shall be collected and accounted for by and under the immediate direction of the *supervisors* and *inspectors* of the revenue, and other *officers* of *inspection*, subject to the superintendence, control, and direction of the Department of the Treasury, according to the authorities and duties of the respective officers thereof. (1 Stat., 373.) The duty on carriages was continued by the Act of May 28, 1796 (1 Stat., 478), which provided (section 3) that said duties shall be collected and accounted for by and under the immediate direction "of the supervisors and inspectors of the revenue, *and other officers of inspection;* subject to the superintendence, control, and direction of the Department of the Treasury, according to the authorities and duties of the respective officers thereof." [Italics for emphasis.] (The office of Commissioner of the Revenue had been established four years previously.) Section 7 of the Act of May 28, 1796 (1 Stat., 480), provides for a penalty for noncompliance with the Act. The taxpayer shall pay on personal application and demand "by the proper officer of inspection" the duties imposed by the Act with a further sum of 25 per cent "for the benefit of such officer." This "proper officer of inspection" is collectively alluded to in the Act of July 11, 1798 (1 Stat., 593), as "the collectors of the revenue." They were clearly subordinate to the supervisors of the revenue and to the inspectors of surveys, and undoubtedly acquired over the years the operating name of collectors from the physical nature of their job.

The Act of May 28, 1796, also contains an interesting system of appeals which is quoted in full:

SEC. 7. * * * *Provided nevertheless,* That if any person of whom such application and demand shall be made, shall forthwith present to such officer of inspection, a full and exact description, of the carriage or carriages, on which the duties demanded shall have accrued, with a statement of the cause, matter or thing, whereby an entire exemption from duty is claimed, or whereby a right is claimed under this Act, to a remission of a part of the sum demanded, such description and statement being first subscribed and verified on oath or affirmation, before some competent magistrate, by the person, by or for whom the same shall be presented; then and in such case, the officer of inspection shall receive such description and statement, and shall, furthermore, forbear to collect the duties and sum demanded.

SEC. 8. *And be it further enacted,* That the officers of inspection, who shall receive the statements and allegations of persons claiming either an entire exemption, or a remission of any part of any duty, or sum demanded under authority, derived from this Act, which may be presented to them, in manner and form before prescribed, shall forthwith transmit the same to the supervisors of their respective districts, for their consideration and decision, with such proofs and evidence in relation thereto, as they shall judge proper. And the supervisors shall forthwith, on receiving the statements and allegations

[1] The constitutionality of the carriage tax was upheld in *Hylton* v. *United States* (1796) (3 Dallas, 171).

before mentioned, with the proofs and evidence accompanying the same, decide thereon, according to the true intent and meaning of this Act.

SEC. 9. *And be it further enacted*, That the decisions of the supervisors in the cases referred to them, in manner before prescribed, shall be forthwith communicated to the officers of inspection, whom the same may concern; and such decisions shall be final and conclusive, when rendered against the demand of any officer of inspection, for any duties imposed by this Act: And in cases, where the said supervisors shall decide, that the duties in question, or any part thereof, are justly payable according to this Act, the proper officer of inspection shall forthwith collect the same, by distress and sale of the goods and chattels of the persons charged with such duties: *Provided nevertheless*, that any person aggrieved by the decision of a supervisor, may, within two months, by application in writing to such supervisor, require that the statements and proofs, on which such decision was founded, be transmitted to the Secretary of the Treasury, who shall have power to determine thereon, and if he judge proper, to direct the duty or duties, which shall have been collected in consequence of such decision, to be returned; and if any such person shall be aggrieved by the decision of the Secretary of the Treasury, he shall be allowed, within four months, to institute a suit in the proper district court of the United States, against the supervisor of the district, for the recovery of any duties collected in pursuance of any decision rendered in manner aforesaid; but the parties maintaining such suits shall, in all such cases, be confined to the assignment and proof of such facts and matters, as may have been previously stated to the said supervisors, in manner before provided.

Presumably it was the Commissioner of the Revenue who functioned on these appeals to the Secretary.

The Act of June 5, 1794 (1 Stat., 376), laid duties upon the issuance of licenses to retail dealers in wines and in foreign distilled spirituous liquors. Here again the license was granted, and the $5 duty on each license was collected by the supervisors of the revenue.

Similarly, a tax on snuff manufactured for sale within the United States and on sugar refined within the United States (Act of June 5, 1794, 1 Stat., 384), and a tax on property sold at auction (Act of June 9, 1794, 1 Stat., 397), were enforced by the same administrative machinery above discussed. Section 6 of the Act of June 9, 1794, says:

SEC. 6. *And be it further enacted*, That the accounts to be rendered and the duties to be, from time to time, paid as aforesaid, by any auctioneer, shall be rendered and paid to the inspector of the revenue within whose survey such auctioneer shall exercise his said trade or business, or to his deputy duly appointed under his hand and seal, * * *

The auctioneer appears to have been our first withholding agent. He was ordered to retain from the proceeds of sales, the duties payable on estates and goods sold by him at auction (section 5). And by section 9 he was allowed a "commission" of 1 per cent on all duties retained and paid over, "for his trouble in and about the same."

The first stamp tax was levied by Act of July 6, 1797 (1 Stat., 527). It was an Act laying *duties* on stamped vellum, parchment and paper. It is noted in these early Acts that the word "tax" is rarely used. The word commonly used is "duty" or "duties." These duties were to be collected and accounted for, by and under the immediate direction and management of the supervisors and inspectors of the revenue, and other officers of inspection, subject to the superintendence, control, and direction of the Treasury Department, according to the respective authorities and duties of the officers thereof (section 9). (See also Act of August 2, 1813, 3 Stat., 77, section 3.)

The stamp tax was more difficult to administer from the standpoint of the field forces. Centralized action was necessary. The statute itself required the action of the Secretary in numerous par-

ticulars. By section 2 the Secretary may agree with banks to an annual composition of such stamp duty on bank notes, of 1 per cent on annual dividends made by the banks to their stockholders. By section 10, the Secretary was required to provide so many marks and stamps differing from each other as shall correspond with the several rates of duty. He must publicize them in a certain manner. The stamp duty, at least in the beginning, necessitated centralized control, and for the first time in an internal revenue matter we find the revenue statute itself (section 16) enjoining the field forces as follows:

SEC. 16. *And be it further enacted*, That the said supervisors of the revenue, officers and other persons to be employed by them, shall, from time to time, for the better execution of their several duties and trusts, observe and execute such directions as they respectively shall, from time to time, receive from the department of the treasury; which department shall take care that the several parts of the United States shall, from time to time, be sufficiently furnished with vellum, parchment and paper, stamped or marked as aforesaid, so that the citizens thereof may have it in their election to buy the same of the officers or persons to be employed in and about the execution of this act, at the usual or most common rates above the said duty, or to bring their own vellum, parchment or paper, to be marked or stamped as aforesaid.

See section 10, Act of August 2, 1813 (3 Stat., 77, 80). The commencement of these stamp duties was postponed for six months by Act of December 15, 1797 (1 Stat., 536), and amended by Act of March 19, 1798 (1 Stat., 545).

In the Appropriation Act of March 19, 1798 (1 Stat., 542), there are items under the Treasury Department for Secretary, Comptroller, Treasurer, Auditor, and Commissioner of the Revenue. The item concerning the latter reads:

For compensation to the Commissioner of the Revenue, clerks and persons employed in his office, five thousand five hundred and twenty-five dollars.

For expenses of stationery, printing and all other contingent expenses in the office of the Commissioner of the Revenue, four hundred dollars.

The difficulties connected with the stamp duty are further indicated by another item appropriating $9,000 "for the purchase of presses, the engraving of dies, and other expenses incident to the preparations made and to be made," for executing said Act.

This brings us to the first *direct* tax laid by the Federal Government. Preliminary thereto was the Act of July 9, 1798 (1 Stat., 580), providing for the valuation of lands and dwelling houses, and the enumeration of slaves.[1]

A direct tax within the United States of two millions of dollars was laid by the Act of July 14, 1798 (1 Stat., 597). The tax was apportioned to the States in specified amounts. By section 2 the said tax shall be collected by "the *supervisors*, *inspectors*, and *collectors* of the internal revenue of the United States, under the direction of the Secretary of the Treasury, and pursuant to such regula-

[1] In this Act there appears a new revenue official called "surveyor of the revenue." His duties are unique and relate only to the direct tax. He is a subordinate of the supervisor and the inspector and is deputized by them. His duties were to receive and preserve the records of the lists, valuations, and enumerations mentioned in the Act; enumerate the slaves; and also to compute the taxes due by each individual. (1 Stat., 580, sections 24, 25, 26, and 27.) He should not be confused with any other revenue employee. He was a glorified custodian and clerk and left no imprint upon revenue history. (See also 2 Stat., 311.)

tions as he shall establish." It was assessed upon dwelling houses, lands, and slaves according to the valuations and enumerations to be made under the Act of July 9, 1798, above mentioned. The assessments were made by the supervisors of the several districts, pursuant to instructions from the Secretary, which instructions the Secretary was required to issue to each supervisor so soon as the valuations and enumerations were completed in the State to which the supervisor belongs. (See also 2 Stat., 312). The provisions for actual collection of this tax are prophetic of things to come. The statute provides:

> SEC. 4. *And be it further enacted*, That the said supervisors shall be, and hereby are authorized and required to appoint such and so many suitable persons in each assessment district within their respective districts, as may be necessary for collecting the said tax, and shall assign to them, respectively, their collection districts therein; which persons shall be collectors within their respective collection districts, and shall collect the said tax under the direction of the supervisors respectively, and according to the regulations and provisions contained in this Act, or to be established pursuant thereto.

These "suitable persons" or "collectors" within their "collection districts" appear to have been born of the practical necessities of the direct tax. They seem to be of the same type as the collectors of the revenue previously employed in collecting the carriage tax and other internal levies. The direct tax, being so widespread, required a large number of local collectors who were close to the grass roots, and with powers suited to the occasion. The "collectors" of the direct tax were not only appointed but could be dismissed by the supervisor (section 17). They were bonded officers (section 7). If such taxes were not paid upon demand, or within 20 days thereafter, it shall be lawful for such collector to proceed to collect the said taxes, by distress and sale of the goods of the delinquent persons, "with a commission of 8 per centum upon the said taxes, to and for the use of such collector" (sections 9 and 11). He also had power "to sell at public sale" a dwelling house or land to satisfy such taxes, subject to power of redemption within two years (section 13). His manner of accounting for taxes collected was provided for, and such sums constituted a lien upon the real estate of himself and his sureties (section 16). (See Act of March 3, 1804, 2 Stat., 262.) All in all, he bears a striking resemblance to the modern deputy collector, except he exercised the statutory power of distraint and sale in his own right and not by derivation. The supervisor was practically the modern collector. The inspector was an intermediate "fifth wheel" who will be eliminated in time.

In the Act laying the direct tax, as well as previous revenue statutes, the office of Commissioner of the Revenue is never mentioned by name. If any revenue office at the seat of the National Government is mentioned, it is the Secretary. The Commissioner's office grew very slowly. In the Appropriation Act of March 3, 1801 (2 Stat., 117, 118), the amount allotted for compensation to the Commissioner of the Revenue, clerks, and other persons employed in his office, was $6,253.06; and for expense of stationery, printing, etc., $900.

The Reports on the Finance by Secretary Albert Gallatin, dated December 18, 1801, and December 16, 1802, disclose a very healthy condition of the Treasury. Even with the repeal of all the internal duties accomplished, by the Act of April 6, 1802, Secretary Gallatin states that so long as the United States shall not be affected by any unforeseen calamity, and whilst the public expenditures shall be kept within their present limits, "there does not appear any necessity for increasing the public revenues." (Reports of the Secretary of the Treasury, volume 1, page 256.)

AN ACT TO REPEAL THE INTERNAL TAXES

All *internal* taxes were repealed from and after June 30, 1802, by "An Act to repeal the Internal Taxes," approved April 6, 1802 (2 Stat., 148). Section 2 of the Act deals with the abolition of the various revenue offices involved. The office of superintendent of stamps (created by Act of April 23, 1800, 2 Stat., 40) was discontinued after April 30, 1802, after which day the *Commissioner of the Revenue* shall perform those duties.

The office of "collectors of the internal duties" shall continue in each "collection district" *until* the collection of the duties incurred before and on June 30, 1802, shall be completed in such district, unless sooner discontinued by the President.

The office of "supervisor" shall continue in each State or district, *until* the collection of the duties incurred, *together with the collection of the direct tax*, shall have been completed in his district, unless sooner discontinued by the President; in which case the collectors thereafter employed in the collection of said duties and tax in such district shall be appointed and removable by the President alone, and shall be immediately accountable to the Treasury Department, under regulations established by the Secretary. (See 2 Stat., 243, 244; 2 Stat., 312; 2 Stat., 316.)

For promoting the collection of said duties or tax incurred which may be outstanding after June 30, 1802, the President was empowered to make such allowance as he may think proper, "in addition to that now allowed by law to any of the collectors of the said duties and tax," but not to exceed a certain per cent.

The office of Commissioner of the Revenue shall be discontinued whenever the collection of the duties and tax incurred shall be completed, unless sooner discontinued by the President, in which case "the immediate superintendence of the collection of such parts of the said duties and taxes as may then remain outstanding shall be placed in such officer of the Treasury Department as the Secretary, for the time being, may designate." (2 Stat., 149.) Such officer seems to have been the Comptroller. (See 3 Stat., 39.)

No specific provision was made for the discontinuance of the offices of "inspectors of the internal revenue," unless it be considered that their jobs ceased when the "supervisor" was discontinued and no further provision made concerning them. Section 5 alludes to certain inspectors of the internal revenues, "whose offices have been suppressed by the President." It has been previously observed that the office of "inspector" was rapidly becoming useless in view of the expanding duties and strategic position of the "collectors."

The exact date when the President concluded that the office of Commissioner of the Revenue was no longer needed is not known. According to the Secretary's Report on the Finances, December 16, 1802, the uncollected arrears of the direct tax alone was estimated at $400,000. In the next Report on the Finances, October 25, 1803, the Secretary estimated the arrears of the direct tax at $250,000. The Commissioner of the Revenue continues in the Appropriation Act of March 2, 1803 (2 Stat., 211). In the Appropriation Act of February 20, 1804 (2 Stat., 250), he is not listed.

Thus closes the first period in the history of the internal revenue. The people of the United States enjoyed a vacation from such taxation for about 11 years, from July, 1802, until July, 1813.

PART 2

PERIOD, 1813–1817

The second resort to internal taxation was occasioned by the effects of the War of 1812. In July and August, 1813, in quick succession, came a series of revenue measures laying new internal taxes and setting up the administrative machinery for their enforcement. The first such enactment was the Act of July 22, 1813 (3 Stat., 22), which dealt with matters of organization and procedure. It provided that for the purpose of assessing and collecting direct taxes and internal duties there are established "collection districts." One "collector" and one "principal assessor" shall be appointed for each of said "collection districts," who shall be a respectable freeholder and reside within the same (section 2). Each principal assessor shall divide his "district" into a convenient number of "assessment districts," within each of which he shall appoint one respectable freeholder to be an "assistant assessor." The Secretary of the Treasury was authorized to reduce the number of assessment districts (section 3).

The Secretary of the Treasury shall establish regulations suitable and necessary for carrying the Act into effect, which regulations shall be binding on each assessor. The Secretary shall also frame instructions for said assessors, pursuant to which instructions, whenever a direct tax shall be laid, the principal assessors shall cause the several assistant assessors in the districts to inquire after the objects of taxation (section 4). The authority of the Secretary was to establish regulations and frame instructions, not to decide cases.

The respective *assistant assessors* shall immediately after being required so to do by the *principal assessors*, proceed through every part of their respective districts, and require all persons liable to the direct tax "to deliver written lists" of the taxable objects, which lists shall be made in such manner as may be directed by the *principal assessor* (section 6). If any person has not prepared a written list, the assistant assessor shall make the list upon the information of the person to be taxed (section 7). Where a person is absent from his residence, upon giving written notice, the assessor may enter upon the premises and, according to the best information he can obtain, make his own list with his own valuations.

The *assistant assessors* after collecting the lists shall proceed to arrange them, making two general lists, one for residents and one for nonresidents, together with the value and assessment of the objects liable tc tax (section 13).

During a period after public notification by the *principal assessor* where the said lists, valuations, and enumerations may be seen, appeals will be received and *determined* by him (the principal assessor). The *principal assessors* were "authorized to receive, hear, and determine, in a summary way, according to law and right, upon any and all appeals" against the proceedings of the assistant asses-

sors; provided, that the question to be determined by the principal assessor on an appeal respecting the valuation of property shall be whether the valuation complained of be in just relation or proportion to other valuations in the same assessment district. All appeals to principal assessors were in writing; specified the cause, matter, or thing respecting which a decision was requested; and stated the ground or principle of inequality or error. *The principal assessor had power to reexamine* and *equalize* the *valuations* as *shall appear just* and *equitable*, but no valuation could be increased by him without previous notice (section 14).

Immediately after hearing appeals, and adjusting and equalizing the valuations, the principal assessors made out lists containing the sums payable according to the assessments upon every object of taxation within their respective districts, so as to raise the quota of the direct tax (section 16). Each *collector* was furnished by the *principal assessors* with one or more of these lists, signed and certified by such assessor.

Each *collector* was authorized to appoint, by an instrument in writing under his hand and seal, as many *deputies* as he may think proper, assigning to each such deputy such portion of his collection district as he may think proper; also to revoke the powers of any deputy giving public notice thereof. Each such *deputy* shall have like authority in every respect to collect the tax assessed within the portion of the district assigned to him, which is vested in the collector; but each collector was responsible to the United States and to individuals for all moneys and for any act done by any of his deputies whilst acting as such. The collector could himself, if he chose, collect the whole or any part of the tax assessed and payable in his district (section 20). Upon receiving his collection list, each collector, or his deputies, gave public notice of the times and places at which he or they would attend to receive the taxes; and if not then paid, or within 20 days thereafter, they could proceed to collect by distraint and sale, with a commission of 8 per cent for the use of the collector (section 21). Remedy against a collector delinquent in collecting taxes or rendering his account with the Treasury Department was initiated by the Comptroller of the Treasury. The Comptroller had disciplinary control over the fiscal officers of the revenue.

The Act of July 22, 1813, the provisions of which have been roughly hereinabove abstracted, was an administrative measure, and erected a good organization for the assessment and collection of direct taxes and internal duties. The *Secretary* held general powers of superintendence. His authority was to establish regulations and frame instructions. He could ask for resignations. He could command obedience to his regulations and frame instructions in the work, but he had no statutory authority to determine specific cases. The *collector* was simply a fiscal agent, collecting the taxes shown on the lists delivered to him by the principal assessor. Aside from the effect of the classified civil service, the appointment and the duties of the deputy collector appear to be in general what they were a hundred years later. The heavy work of determining tax liability fell to the *assistant assessors*. On *appeal*, the reexamining and redetermining authority existed in the *principal assessor*, who appeared to have the final word in specific cases.

Two days after the organization just described was put on the statute books, the office of the Commissioner of the Revenue was reestablished by the Act of July 24, 1813 (3 Stat., 39). When the statute grants the Secretary power to *superintend* the *collection* of revenue, what is meant? Along with his other duties, the Secretary could not personally do all things required of a central office in supervising an expanding revenue system. Hence it is natural to create an office of Commissioner of the Revenue. The statement of the duties of the reestablished office affords some indication of the activities in the Secretary's office, which may broadly be described as the *superintendence* of the *collection* of the revenue. The statute provides:

> That for superintending the collection of the direct tax and internal duties, laid by the authority of the United States, there shall be an officer in the Department of the Treasury, to be denominated commissioner of the revenue, who shall be charged, under the direction of the head of the Department, with preparing all the forms necessary for the assessors and collectors of the tax and duties aforesaid; with preparing, signing, and distributing all the licenses required by any law imposing any of the duties aforesaid; and with the superintendence generally, of all the officers employed in assessing and collecting the said tax and duties.
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> SEC. 2. *And be it further enacted,* That the said commissioner of the revenue shall likewise superintend the collection of the residue of the former direct tax and internal duties which may be still outstanding, and shall also execute the services with respect to lighthouses and other objects which were usually performed by the former commissioners of the revenue.
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> SEC. 3. *And be it further enacted,* That it shall be lawful for the Secretary of the Treasury to place also the collection of the duties on imposts and tonnage under the superintendence of the said commissioner of the revenue, if, in his opinion, the public service will be promoted by transferring that duty from the comptroller to the said commissioner.
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> SEC. 4. *And be it further enacted,* That the compensation of the said commissioner of the revenue shall be the same with that of the auditor of the Treasury; and that he shall, for the present, be allowed a number of clerks whose salaries shall not, in the whole, exceed four thousand dollars a year.

It is observed that "for *superintending* the *collection* of the direct tax and internal duties," which was the same statutory authority as the Secretary had over such taxes, the office of the Commissioner of the Revenue was created. He would thereafter superintend the collection of such revenue, "*under the direction* of the Head of the Department."

With the internal administrative organization established, there follows in quick succession a series of internal revenue measures, which bear a close resemblance to those imposed during the period 1789–1802. There were laid duties on sugar refined within the United States (3 Stat., 35); on carriages for the conveyance of persons (3 Stat., 40); on sales at auction (3 Stat., 44); a direct tax (3 Stat., 53); on licenses to retailers of wine and spirituous liquors (3 Stat., 72); and the stamp duties on instruments of writing (3 Stat., 77).

Authority of collectors. — The collectors were authorized to collect the duties on refined sugar (3 Stat., 35, section 14) and "to *prosecute* for the recovery of the same." All fines, penalties, and forfeitures under the Act could be sued for in the name of the United States or of the collector. Similar provisions were in the Act laying duties on licenses to distillers of spirituous liquors (3 Stat., 42, section 6); on sales at auction (3 Stat., 44, section 10); in the Act of

August 2, 1813 (3 Stat., 72, section 5), laying duties on licenses to retailers of wine, spirituous liquors, and foreign merchandise; by the Stamp Duty Act of August 2, 1813 (3 Stat., 77, 80, section 13); by the Distilled Spirits Act of December 21, 1814 (3 Stat., 152, section 21); by the Act of January 18, 1815 (3 Stat., 180, section 21); and the Act of January 18, 1815 (3 Stat., 186, section 24). The authority of the collectors to cause suits to be commenced without delay and to prosecute for breaches of revenue laws was enlarged in an Act approved March 3, 1815 (3 Stat., 239, 242, sections 14 and 21).

The collectors were authorized to collect the duties on carriages (3 Stat., 40). In this Act the only reference to the Treasury Department was that the *forms* of the certificates evidencing payment of the tax "shall be prescribed by the Treasury Department."

The Direct Tax Act of August 2, 1813 (3 Stat., 53), provides that said tax shall be assessed and collected in the manner, and by the officers to be appointed under the Act of July 22, 1813 (3 Stat., 22), the provisions of which have already been summarized. The incidence of the direct tax was stated (3 Stat., 22, section 5) to be that whenever a direct tax shall be laid by the authority of the United States, the same shall be assessed and laid on the *value* of all lands, lots of ground with their improvements, dwelling houses, and slaves, which several articles subject to taxation shall be enumerated and valued by the respective assessors at the rate each of them is *worth in money*. Each State was permitted to assume and pay its quota into the United States Treasury, and thereby be entitled to a 15 per cent discount if paid by a specified date (section 7).

Under the Act of July 24, 1813 (3 Stat., 42), laying duties on licenses to the distillers of spirituous liquors, section 3 provided that it was the duty of the collectors to grant licenses for distilling, which "shall be signed by the *Commissioner of the Revenue*, and countersigned by the collector." This is the first appearance of the commissioner of the revenue in a statute laying duties or taxes. Similar statutory language providing that the licenses "shall be signed by the commissioner of the revenue" and countersigned by the collectors occurs in the Act of August 2, 1813 (3 Stat., 72), laying duties on licenses to retailers of wines, spirituous liquors, and foreign merchandise, and in the Act of January 18, 1815 (3 Stat., 180, 182, section 2), imposing a sales tax.

THE POWER OF EXAMINATION

The collectors granted the licenses to exercise the trade or business of an auctioneer (3 Stat., 44, section 4). Every licensed auctioneer could retain in his hands such sums as were due upon goods sold by him. Another interesting provision made it compulsory upon auctioneers to keep accurate books, giving the collector the right of examination. Section 6 provides in part:

> * * * and to the end that such accounts may be accurately kept and rendered, it is hereby made the duty of every auctioneer to enter, from day to day, as often as any sale shall be made, in a book, or on a paper to be kept by him for that purpose, the amount and particulars of the respective sales by him made; which book or paper shall at all reasonable times, upon request made, be submitted for examination to the collector aforesaid, within whose district such auctioneer shall be, on pain of forfeiting, for every refusal to comply with such request, the sum of five hundred dollars. (3 Stat., 46.)

This was clearly the power of examination. Similarly, under the Act of July 24, 1813 (3 Stat., 42), laying duties on licenses to distillers of spirituous liquors, the collector or his deputy had authority to gain admittance into any distillery "for the purpose of examining and measuring the said still or stills, boiler or boilers." The Act of December 21, 1814 (3 Stat., 152, 153), went even further. It provided that the conditions of the bond to be given by a distiller shall contain the following:

> * * * that he will, from day to day, enter or cause to be entered, in a book to be kept by him for that purpose, and which shall be open at all times, between the rising and setting of the sun, for the inspection of the said collector, who may take any minutes, memorandums, or transcripts, thereof, the number of gallons of spirits distilled, keeping separate accounts of the spirits distilled from foreign and domestic materials; and will render to the said collector, on the first days of January, April, July and October, in each year, or within ten days thereafter, a general account in writing, taken from his books, of the number of gallons of each kind of spirits distilled for three months preceding said days, or for such portion thereof as may have elapsed from the date of said entry and report to the said day which shall next ensue; that he will at the said times deliver to the said collector the original book of entries, which book shall be retained by said officer: * * *.

See also Act of January 18, 1815 (3 Stat., 180, section 2). The authority for collectors to search and seize for violations of the Sales Tax Act of January 18, 1815, was conferred by the Act of March 3, 1815 (3 Stat., 239, 241, section 10).

By the Act of August 2, 1813 (3 Stat., 77), there were laid stamp duties on notes of banks, bankers, and certain companies; on notes, bonds, and obligations discounted by banks, bankers, and certain companies; and on bills of exchange of certain descriptions. This Act was similar to the stamp tax levied by Act of July 6, 1797 (1 Stat., 527), but certain new features appear. Section 4 of the Act makes it the duty of the newly created Commissioner of the Revenue (instead of the Secretary as in the earlier act) to cause to be provided so many marks and stamps differing from each other as shall correspond with the several rates of duty; also to publicize the same. The office of the Commissioner of the Revenue stamps vellum, parchment, or paper transmitted by the collector. The Secretary of the Treasury, however, by the statutory language, retained the power to make annual composition agreements with banks, and the duty of furnishing all the paper required by the Act. (Accord., 3 Stat., 148.)

The Act of August 2, 1813 (3 Stat., 82), entitled "An Act making further provision for the collection of internal duties, and for the appointment and compensation of assessors," contains several provisions of historic interest. The commissions allowed collectors for the collection of the direct tax and internal duties "shall in no case exceed four thousand dollars to any collector" (section 7). The collectors' bonds were approved by the Comptroller of the Treasury; such a bond was filed in his office "to be by him put in suit for the benefit of the United States," upon breach of its conditions (section 4). Although the Comptroller was in charge of the squaring of collectors' accounts and the institution of criminal actions against collectors for defalcations, the ordinary contacts were between the collectors and the Commissioner of the Revenue. Section 11 of the Act provides that it shall be the duty of the collectors to keep accurate accounts of the official emoluments and the expenditures, and

transmit same annually to the Commissioner of the Revenue. One might suppose that the statute would have required a report of that character to be sent to the Comptroller. This leads to the belief that as between the Comptroller and collectors, the former stepped in only where action was to be taken on the collector's bond, or some disciplinary action or criminal proceedings instituted for wrongdoing. For ordinary administrative purposes, the Commissioner of the Revenue directed the collectors. Incidentally, the Appropriation Act of March 24, 1814 (3 Stat., 106, 107), granted as compensation to the Commissioner of the Revenue, clerks, and persons employed in his office, the staggering sum of $9,410. By the Act of November 22, 1814 (3 Stat., 146), the Secretary was authorized to designate a clerk in the office of the Commissioner of the Revenue to assist in the signing of licenses issuing from that office; and the clerk so designated shall have power to sign his own name to such licenses.

Concerning deputy collectors, section 10 of the Act of August 2, 1813, supra, provides:

> * * * That each collector shall be authorized to appoint, by an instrument or instruments under his hand, as many deputies within his collection district, to be by him paid and compensated for their services, as he may deem proper, whose acts officially and legally performed shall be as valid and available in every respect as if performed by the collector himself.

In view of the language of section 20 of the basic Act of July 22, 1813, it is not seen why the above-quoted section was inserted in the later Act of August 2, 1813.

The Act of April 18, 1814 (3 Stat., 137), contained additional provisions concerning the collector and his office:

> SEC. 8. * * * That in case of the sickness or temporary inability of a collector to discharge such of his duties as cannot under existing laws be discharged by a deputy, they may be devolved by him on a deputy: *Provided*, Information thereof be immediately communicated to the Commissioner of the Revenue, and the same shall be approved by him; *And provided*, That the responsibility of the collector, or his sureties, to the United States, shall not be thereby impaired.
>
> SEC. 9. * * * That in case a collector shall die, resign, or be removed, the deputy in his service, at the time immediately preceding, who shall have been longest employed by him, may and shall, until a successor is appointed, discharge all the duties of said collector.

Section 8, supra, is further proof that the administrative supervision over the collectors was entrusted to the Commissioner of the Revenue.

The Congress was convened, by special call of the President, in September, 1814, to replenish an exhausted Treasury and renovate the public credit. Internal duties were increased and procedures perfected.

Additional duties were laid on distilled spirits (Act of December 21, 1814, 3 Stat., 152), and on sales at auction and on licenses to retail wines, spirituous liquors, and foreign merchandise (Act of December 23, 1814, 3 Stat., 159). There was also enacted a sales tax, levying duties upon certain goods, wares, and merchandise manufactured or made *for sale* within the United States (Act of January 18, 1815, 3 Stat., 180).

In the Act of December 15, 1814 (3 Stat., 148), graduated duties on *carriages*, and the harness used therefor, were placed upon a valuation basis. A different procedure was adopted, which made the principal assessor the primary determinator of the tax instead of the

collector as in the prior Act levying the tax (3 Stat., 40). Section 8 provided:

* * * That whenever hereafter there shall be a general assessment made throughout the United States, it shall be the duty of the principal assessor in each collection district, agreeably to instructions to be given by the Secretary of the Treasury, to cause a list of carriages, liable to duty, with the valuations thereof, as fixed in this act, to be made out and delivered to the collector for such district, according to which valuations, so far as the same may apply, the duties hereby imposed shall be thereafter assessed and collected: *Provided,* that the owner or keeper of a carriage liable to duty, shall not be thereby released from the obligation to make the entry hereby required to be made: *And provided further,* That carriages that are not contained in said list, shall be also liable to duty.

When the basis of the tax was changed from specified amounts with respect to types of carriages to specified amounts with respect to *valuation* brackets, the principal assessor displaced the collector as the tax determinator. When a tax is based upon a valuation, the procedural similarity to the direct tax is inescapable. This seems to be the first venture of the "principal assessor" outside the field of direct taxes. Likewise, when a tax was laid on household furniture, and on gold and silver watches, at different rates according to a scale of *valuations*, the matter was handled by the assistant assessors and the principal assessors as in the case of the direct tax (Act of January 18, 1815, 3 Stat., 186). These are predictions of things to come. It is a forecast of the dominant position the *principal assessor* occupied in the Civil War revenue measures.

AN ANNUAL DIRECT TAX

By the Act of August 2, 1813 (3 Stat., 53), there was laid a *direct tax* of $3,000,000 upon the United States; but under the Act of January 9, 1815 (3 Stat., 164), a direct tax of $6,000,000 was "*annually* laid upon the United States." By this time the lessons of experience may be seen in the words of the statute. The Secretary of the Treasury still retained his authority to establish regulations and frame instructions, which shall be binding upon each principal assessor and his assistants in the performance of their duties. However, further power was granted the Secretary which seems, for the first time, to give him authority to inject himself into specific cases after initial action in the field. The Secretary finds his office compelled to take a more direct hand in field action. Section 4 of the Act reads in part:

* * * And it shall be further lawful for the Secretary of the Treasury to direct all errors committed in the assessment, valuation, and tax lists, or in collection thereof, heretofore or hereafter made in the valuation, assessment, and tax lists of the direct tax, laid by virtue of the said Act of Congress entitled "An Act to lay and collect a direct tax within the United States," and also, all such errors as may from time to time be committed in the assessment, valuation, and tax lists, or in the collection thereof, as may hereafter be made in the assessment of the direct tax by this Act laid, to be corrected in such form, and upon such evidence, as the said Secretary shall prescribe and approve.

These are powers exercisable at the level of administering specific cases. They are powers never exercised at that time by the Commissioner of the Revenue in his own right.

The principal assessor had authority to *revise* the valuations, assessments, and lists of former years to bring them up to date and

correct errors. To do this he possessed complete examining and determining authority. The statute says (section 6):

> And for the purpose of making the said revisal as aforesaid, of the said valuations, assessments, and tax lists, the principal assessors shall take and pursue all lawful measures, by the examination of records, by the information of the parties in writing, or by any other satisfactory evidence or proof.

There must have been considerable dissatisfaction over the valuations not only as between individuals but also as between counties or State districts. The most important procedural change made by the Act of January 9, 1815, was the establishment of a board of principal assessors. Its duty was to equalize and proportion the valuations among the several counties or State districts. The *principal assessors* in each State convened in general meeting at such time and place as directed by the Secretary of the Treasury. The principal assessors so convened, or a majority of them, were constituted a board of principal assessors (section 16). Clerks were appointed by the board. Within three days after the time appointed for the general meeting, each principal assessor shall furnish the board with the lists of valuation of each assessment district within his collection district. It was the duty of the board "diligently and carefully to consider and examine the said lists of valuation," and they had power to revise, adjust, and equalize the valuation of property in any county or State district. Upon completion of the valuations, the board proceeded to apportion to each county and State district its proper quota of direct tax. The lists were returned to the principal assessors, who proceeded to revise them conformable to the board's apportionment. The principal assessors then computed the tax and turned the lists over to the collector, whose duty it was to collect the tax so shown. In other respects the improved Direct Tax Act of January 9, 1815, follows the general pattern of the Acts of July 22, 1813, and August 2, 1813, heretofore analyzed and discussed.

The first sales tax imposed by the Federal Government was the Act of January 18, 1815, laying duties on various goods, wares, and merchandise manufactured for sale within the United States (3 Stat., 180). The sales tax was administered as well as collected by the collectors. By another act of the same day, Act of January 18, 1815 (3 Stat., 186), duties were laid on the valuations of household furniture and of gold and silver watches. These duties were determined by the assistant and principal assessors. The Act of February 27, 1815 (3 Stat., 217), extended the sales tax to cover gold, silver and plated ware, and jewelry and pastework.

It is interesting to note that in the first two enactments mentioned in the next preceding paragraph, the official title of the collectors is gradually emerging. In the Act of January 18, 1815, imposing the sales tax, there occur the following descriptive phrases: "collector of internal duties" (3 Stat., 181), and "any collector of the internal duties" (3 Stat., 183). In the Act of January 18, 1815, laying duties on household goods, the following expression is used: "each of the collectors of the direct taxes and internal duties" (3 Stat., 188).

A general administrative Act approved March 3, 1815 (3 Stat., 239), fixed the compensations and increased the responsibilities of the "collectors of the direct tax and internal duties." In the relation of the collector to the Washington office there is one item of peculiar interest. Section 6 provides that it shall be the duty of each

collector to draw out an annual statement, exhibiting in alphabetical order the names of all persons who paid to him or his deputies during the preceding calendar year any one or more of the internal duties (with two stated exceptions), with the aggregate amount so paid annexed to each name; to cause 100 copies of same to be printed, one copy to be transmitted to the Commissioner of the Revenue, one copy lodged with the principal assessor, one copy with each town clerk in his district, and one copy to be posted at the courthouses, etc. This is genuine publicity, and is characteristic of taxation based on property valuations.

SUMMARIZATION

The early statutes contain a certain number of significant provisions which reveal the relationship that obtained between the field forces and the Treasury Department in Washington. Each collector on receiving from the principal assessor a list of persons liable to the direct tax shall subscribe three receipts, one of which shall be given on a copy of the list, which list and receipt shall remain with the principal assessor and be open to the inspection of any person who may apply to inspect the same; and the other two receipts shall be given on aggregate statements of the lists, one of which aggregate statements and receipts shall be transmitted to the Secretary and the other to the Comptroller of the Treasury. (Act of July 22, 1813, 3 Stat., 22, 30, section 17; Act of January 9, 1815, 3 Stat., 164, 172, section 22.) In the Act laying duties on household furniture, etc., the procedure for which was very similar to that for the direct tax, one of the aggregate statements was transmitted to the Commissioner of the Revenue (instead of the Secretary), the other going to the Comptroller of the Treasury. (Act of January 18, 1815, 3 Stat., 186, 188, section 8.) In all probability the receipts concerning the lists of direct tax, which went to the Secretary, were referred by him to the Commissioner of the Revenue.

As regards the direct tax, each collector before receiving any list for collection shall give bond, to be approved by the Comptroller of the Treasury, said bond to be deposited in the office of the Comptroller. The collector's bond was filed in the office of the Comptroller, "to be by him put in suit for the benefit of the United States," upon breach of its conditions. (Act of August 2, 1813, 3 Stat., 82, 83, section 4; Act of July 22, 1813, 3 Stat., 22, 30, section 18; Act of January 9, 1815, 3 Stat., 164, 172, section 23.) Each collector was charged with the whole amount of taxes receipted for by him; he may be allowed credit for the taxes of persons absconded or become insolvent prior to the day when the tax ought to have been collected, provided it is proven to the satisfaction of the Comptroller that due diligence was used by the collector. If any collector failed either to collect or to render his account, it was the duty of the Comptroller to issue a warrant of distress; and for want of goods sufficient to satisfy the warrant, "the same may be levied on the person of the collector, who may be committed to prison, there to remain until discharged in due course of law." (Act of July 22, 1813, 3 Stat., 22, 33, section 28; Act of January 9, 1815, 3 Stat., 164, 177, section 33; Act of May 15, 1820, 3 Stat., 592, section 2.)

These provisions demonstrate the power of the Comptroller in respect of disciplinary action against delinquent collectors. They do

not establish any serious control by the Comptroller as regards the lawful conduct of their offices by collectors. The statute creating the office of Commissioner of the Revenue charged him with the superintendence generally of all the officers employed in assessing and collecting the direct tax and internal duties. The collectors were required to keep accurate accounts of their official emoluments and expenditures, and transmit same annually to the Commissioner of the Revenue. (Act of August 2, 1813, 3 Stat., 82, 84, section 11.) The collectors also transmitted monthly reports to the Secretary as to collections made by them within the month. (Act of July 22, 1813, 3 Stat., 22, 32, section 26; Act of January 9, 1815, 3 Stat., 164, 176, section 31.) When the Comptroller's jurisdiction is involved the statute is explicit, as witness the provisions for sending collectors' receipts for lists of direct tax to both the Comptroller *and* the Secretary. When a thing or report affecting revenue went to the Secretary, under the statute, it was probably by him referred to the Commissioner of the Revenue.

In the Acts imposing the sales tax and the duties on household furniture and watches, it is expressly provided that the forms of lists and notifications "shall be prescribed by the Treasury Department." (Act of January 18, 1815, 3 Stat., 180, 184, section 12; Act of January 18, 1815, 3 Stat., 186, 190, section 18.) In the sales tax, the collector also held the examining and tax determining authority. (Ibid., sections 2 and 15.) In the tax on household goods the examining and determining authority was held by the assistant and principal assessors (ibid., sections 2–7), except within the Territories wherein no direct tax is laid, in which event the collectors performed all the duties required of the principal assessors. (Ibid., section 11.)

Under the tax on household goods, in case any errors shall be committed in collecting, making out, or rendering the lists by the assistant or principal assessors, or the collectors, the same may and shall be corrected in such way and within such time as shall be prescribed by the Secretary. (Ibid., section 16.) The last provision was undoubtedly borrowed from the direct tax procedure. (Act of January 9, 1815, 3 Stat., 164, 166, section 4.) It grants the Secretary authority to redetermine the liability in specific cases as to those specific taxes. No doubt the Commissioner of the Revenue exercised this authority by delegation from the Secretary. It was a review or appellate power superimposed upon field authority and action.

The Secretary also held statutory authority under the stamp duties to function in specific cases in the initial instance. In the Stamp Act of August 2, 1813 (3 Stat., 77), section 2 gave the Secretary power to agree to an annual composition with banks, in lieu of the stamp duties, of 1½ per cent "on the amount of the annual dividend made by such banks to their stockholders." In a supplementary Stamp Act of December 10, 1814 (3 Stat., 148), it was lawful for the Secretary to make a composition with private bankers in lieu of stamp duties on their notes, at the rate of 1½ per cent "on the amount of the *annual profit* made by such private bankers, respectively, upon the capital employed in the business of their respective banks." The Secretary was authorized to "estimate the profits of the said private bankers" either according to the capital employed in the business and the half-yearly profits actually made thereon, or according to

the amount of capital which upon the general principle and practice of banking would be requisite and proper for conducting the business of a bank to the extent appearing upon the monthly reports, and the usual profits made upon such capital. This was a stamp duty on notes, measured by *annual profits*. It is the nearest approach to a form of income tax in those days, and it was administered, even as to specific cases, by the Secretary. Stamp duties seem to provide the first instance of internal revenue taxation in which the central office in Washington held full statutory power initially to determine tax in a specific case. The mode of collection employed in stamp taxes, including the essential physical paraphernalia, makes such a form of revenue peculiarly susceptible of strong centralized control.

A PERMANENT SYSTEM OF INTERNAL DUTIES

In his annual Report on the Finances, dated December 6, 1815, A. J. Dallas, Secretary of the Treasury, said:

> That the establishment of a revenue system, which shall not be exclusively dependent upon the supplies of foreign commerce, appears, at this juncture, to claim particular attention.

Later in the same report, Secretary Dallas amplified his remarks somewhat:

> From the review of the financial measures of the Government, in reference to the recent state of war, which constitutes the first part of the present report, it appears that the almost entire failure of the customs, or duties on importations, and the increasing necessities of the Treasury, rendered it necessary to seek for pecuniary supplies in a system of internal duties; both in respect to the subjects of taxation and to the amount of the several taxes, the return of peace has always been contemplated as a period for revision and relief. In the fulfillment of that policy, a reduction of the direct tax; a discontinuance of taxes which, upon trial, have proved unproductive, as well as inconvenient; and, above all, the exoneration of domestic manufactures from every charge that can obstruct or retard their progress, seem to be the objects that particularly invite the legislative attention. There will still remain, however, a sufficient scope for the operation of a permanent system of internal duties, upon those principles of national policy which have already been respectfully suggested. (Reports of the Secretary of the Treasury, volume 2, pages 24, 35–36.)

The hope aroused by Secretary Dallas for the retention of a permanent system of internal duties was short-lived. The receipts from customs for the years 1815 and 1816 exceeded all estimates and expectations. The Report of the Finances, by Secretary William H. Crawford, under date of December 5, 1817, makes the prediction that customs receipts for 1817, good as they were, "will be found to be less than that of any number of successive years." This accurate and optimistic report sounded the death knell of internal duties. Affixed to the report of December 5, 1817, supra, are two statements, designated "B" and "C," signed by Samuel H. Smith, Commissioner of the Revenue. Since this is the first time anything over the signature of the Commissioner has been found in the Secretary's annual report, the two statements are quoted in full:

"B"

Statement of the accruing internal duties, during the year 1816, with the computed expenses of collection

Amount of accruing duties	$4,633,799.00
Computed expenses of collection	237,665.75
Net revenue	4,396,133.25

"C"

Statement respecting the direct tax, imposed March 5, 1816

Amount of the tax imposed on the respective States		$3,000,000.00
Add amount of direct tax imposed on the District of Columbia		9,999.20
		3,009,999.20
Computed expenses of collection, with the deductions made to assuming States for the prompt payment of their quotas, viz:		
On $781,133.73 assumed by the States of New York, South Carolina, Georgia, and Ohio, on which a deduction of 15 per cent was allowed	$117,110.05	
On $2,228,865.47 collected, or to be collected, by the collectors	107,545.95	
		224,656.00
Net revenue		2,785,343.20

REVENUE OFFICE, *December 1, 1817.*

SAMUEL H. SMITH,
Commissioner of the Revenue.

The Act of December 23, 1817 (3 Stat., 401), entitled "An Act to abolish the internal duties," repealed all statutes relative to internal duties from and after December 31, 1817. Section 2 provided that the offices of "the collectors of the internal duties and direct tax" shall continue until the collection of the duties and direct taxes accrued on December 31, 1817, shall have been completed, unless sooner discontinued by the President, who was empowered to discontinue any collector and to unite any two or more collection districts lying and being in the same State. Section 2 further provided:

* * * and the office of commissioner of the revenue shall cease, and be discontinued, whenever the collection of the [accrued] duties and taxes above mentioned shall be completed, unless sooner discontinued by the President of the United States, who shall be, and hereby is empowered, whenever the collection of the said duties and tax shall have been so far completed as, in his opinion, to render that measure expedient, to discontinue the said office; in which case, the immediate superintendence of the collection of such parts of the said duties and taxes as may then remain outstanding, shall be placed in such officer of the Treasury Department as the Secretary, for the time being, may designate: * * * (3 Stat., 402.)

It is noted that in section 2 appears the designation "any collector of the internal revenue," which is very nearly the official title of collectors to-day. No mention is made of the assessors; their offices were abolished by the repeal of all statutes relative to internal duties and no occasion existed for their temporary continuance in office.

However, many things remained to be done. Even additional legislation was occasionally required. For example, the Act of April 20, 1818 (3 Stat., 441), relative to direct taxes and internal duties, by section 5 of which the President was again authorized, whenever he considered it expedient, "to abolish all the existing offices of collectors of the direct tax and internal duties," whereupon the duties remaining to be performed devolved upon such officer as the President may designate. In the Appropriation Act of March 3, 1819 (3 Stat., 496, 498), provision was made for the Commissioner of the Revenue and for clerks in his office. However, in the Appropriation Act of April 11, 1820 (3 Stat., 555, 557), no provision is made for the Commissioner, but the following obituary notice is inserted:

For three clerks to complete the duties of the Commissioner of the Revenue, three thousand seven hundred dollars.

PART 3

THE BLACK-OUT PERIOD, 1818–1861

Although all internal duties were repealed, effective December 31, 1817, there was considerable activity for many years respecting such taxes accrued and outstanding on that date. Meanwhile the internal organization of the Treasury Department was undergoing some functional changes.

On May 15, 1820, there was approved "An Act providing for the better organization of the Treasury Department" (3 Stat., 592). The President was authorized to designate an officer of the Treasury Department as "the agent of the Treasury." It was the duty of "the agent of the Treasury" to direct and superintend all orders, suits, or proceedings, in law or in equity, for the recovery of money or property, including taxes, in the name and for the use of the United States. The attorneys of the United States, in the prosecution of all suits in the name and for the benefit of the United States, "shall conform to such directions and instructions, touching the same, as shall, from time to time, be given to them, respectively, by the said agent of the Treasury" (section 7). It was also the duty of the United States attorneys, of the clerks of the district and circuit courts, and of the United States marshals to make certain reports to the said agent of the Treasury.

The "agent of the Treasury" was the immediate ancestor of the Solicitor of the Treasury. The Act of May 29, 1830 (4 Stat., 414), provided for the appointment by the President, with the advice and consent of the Senate, of "some suitable person, learned in the law, to be Solicitor of the Treasury." All the powers and duties of the agent of the Treasury were transferred to the Solicitor; and said Solicitor was charged with performing "so much of the duties *heretofore* belonging to the office of commissioner, or acting commissioner of the revenue, as relates to the superintendence of the collection of outstanding direct and internal duties." The Solicitor also had charge of all lands or other property conveyed to the United States, in trust or otherwise, in payment of debts, including the power to sell and to release. Under the statute, the Secretary transferred to the Solicitor all books, papers, and records pertaining to the above powers and duties. The Solicitor stepped into the shoes of "the agent of the Treasury," as regards reports and power to instruct the district attorneys, marshals, and clerks of the courts.

Sections 4 and 5 of the Act of May 29, 1830, provided:

SEC. 4. *And be it further enacted*, That when any *suit or action* for the *recovery* of any fine, *penalty*, or forfeiture shall be instituted or commenced, a statement of such *suit or action* shall be immediately transmitted to the solicitor of the treasury, by the attorney instituting the same; and whenever any seizure shall be made for the purpose of enforcing any forfeiture, the *collector* or other person causing such seizure to be made, shall, in like manner, immediately give information thereof to the solicitor of the treasury.

SEC. 5. *And be it further enacted*, That the said solicitor shall have power to instruct the district attorneys, marshals, and clerks of the circuit and district courts of the United States, in all matters and proceedings, *appertaining to suits* in which the United States is a party, or interested, and cause them or either of them, to report to him from time to time, any information he may require in relation to the same. [Italics for emphasis.]

It is instructive to observe that the words *suit* for the *recovery* of a *penalty* form the statutory language used in the year 1830 to grant the newly created Solicitor authority respecting a multitude of matters, and was interpreted by him to include *criminal* proceedings in revenue violations. The same terminology appears to-day in section 3740, Internal Revenue Code, to describe the position of the Commissioner of Internal Revenue respecting internal revenue suits. Section 7 authorized the Solicitor, with the approbation of the Secretary, to establish rules and regulations for the observance of *collectors*, district attorneys, and marshals respecting suits in which the United States are parties, and which may be deemed necessary for the just responsibility of those officers, "and the prompt collection of all *revenues and debts* due and accruing to the United States."

The Secretary was authorized to transfer one of the clerks then employed in the office of the Fifth Auditor to the office of Solicitor. It was the Fifth Auditor to whom had been transferred the clerks completing the duties of the Commissioner of the Revenue. (See Appropriation Act of April 2, 1824, 4 Stat., 11, 13.) Even in 1830 and later, moneys were being received by the Treasury from arrears of direct tax and internal revenue. (Reports of the Secretary of the Treasury, volume 3, page 246.)

Section 10 of the Act is of importance and interest. It reads:

* * * That it shall be the *duty* of the Attorney General of the United States, at the *request* of said Solicitor, to *advise* and *direct* the said Solicitor as to the *manner of conducting* the suits, proceedings, and prosecutions aforesaid; and the Attorney General shall receive, in addition to his present salary, the sum of five hundred dollars per annum. [Italics for emphasis.]

The Attorney General was one of the original Cabinet officials of the United States Government. (Act of September 24, 1789, 1 Stat., 92.) The Department of Justice, however, was not established until the Act of June 22, 1870 (16 Stat., 162). The "agent of the Treasury" and Solicitor of the Treasury each made their appearance during a dormant period so far as internal revenue is concerned. There were no internal taxes and there was no Department of Justice. In any event, the legal headship of the Attorney General was recognized to the extent that he should, at the request of the Solicitor, advise and "*direct*" him "as to the *manner* of conducting the suits, proceedings, and prosecutions aforesaid."

In an opinion dated August 31, 1855, treating of the relation of the President to the executive departments, the Attorney General ruled (7 Ops. Atty. Gen., 453, 475) that it was not intended by section 5, above quoted, "to confer on the Solicitor a mandatory power independent of the authority of the President, or of the Heads of Department. On the contrary, by the tenor of the statute itself, and by a subsisting general order of the President, the Solicitor, in giving his instructions, is to act upon advice of the Attorney General, or special direction of the Secretary within whose Department any suit in law may arise."

The report by the Secretary on the State of the Finances, dated December 6, 1853, contains informative comment about the functioning of the Solicitor of the Treasury. Secretary Guthrie says:

> Attention was also given to those branches of the Department where the accounts of disbursing agents and others, owing money to or having claims against the Government, are adjusted and settled. It was found that the official corps was disorganized, and some of the bureaus very much out of order, and greatly in arrear with the business confided to them.
>
> * * * All claims due the United States, after a failure or refusal to pay, are put in suit in the district where the parties or some of them reside, and, except post office suits, go upon the books of the Solicitor of the Treasury, and are collected under his direction.

(Report on the Finances, by the Secretary of the Treasury, volume 10, page 15.) In the same volume, at page 152, is the Report of the Solicitor of the Treasury, dated November 17, 1853, explaining the unfortunate situation.

While the internal revenue was moribund the Customs Service was attaining full stature. The Act of March 3, 1849 (9 Stat., 396), created in the Treasury Department an officer to be called the Commissioner of Customs. He was appointed by the President, with Senate confirmation. This officer was appointed "in the Department of the Treasury, *as one of its bureaus*." He shall perform all the acts and exercise all the powers, now devolved by law on the First Comptroller of the Treasury, relating to the *receipts* from customs and the *accounts* of collectors and other officers of the customs, or connected therewith. He held his office by the same tenure, and received the same salary, as the First Auditor of the Treasury. The Act further required the Secretary to transfer from the office of the First Comptroller such clerks as may be necessary "to the bureau of the Commissioner of Customs." Although the geography of the problem enabled a centralized control over customs administration, it is interesting to note that as late as 1849 the duties of the First Comptroller and of the new Commissioner of Customs related to the *receipts* from customs and the *accounts* of customs officers and matters connected therewith. Such an officer has more resemblance to a fiscal supervisor and coordinator than to an investigator and determinator of tax liability.

The same Act of March 3, 1849 (9 Stat., 397), created an officer to be called the Assistant Secretary of the Treasury, "who shall examine *all letters*, contracts, and warrants, prepared for the signature of the Secretary of the Treasury." He undoubtedly exercised some influence over revenue administration.

COMPROMISE

The beginning of the authority to "compromise" taxes may be found in the Act of March 2, 1831 (4 Stat., 467), entitled "An Act for the relief of certain insolvent debtors of the United States." Under the prescribed procedure the Secretary of the Treasury "may *compromise* with the said debtor, upon such terms and conditions as he may think reasonable and proper under all the circumstances of the case" (section 4).

The authority to compromise was made general by the Act of March 3, 1863 (12 Stat. 737, 741, section 10), so that upon a report by the attorney or agent having charge of any claim in favor of the

United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that the same be compromised upon the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury was authorized to compromise the claim accordingly

The situation in this respect was altered radically by the Act of June 30, 1864 (13 Stat., 223, 240, section 44), by which the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary, was authorized to compromise all suits "relating to internal revenue."

PART 4

CIVIL WAR PERIOD

The Act of August 5, 1861 (12 Stat., 292), being "An Act to provide increased revenue from imports, to pay interest on the public debt, and for other purposes," imposed *annually* a direct tax of $20,000,000 and a tax upon annual income. In respect of the direct tax, each State could assume, collect, and pay its quota, in its own way. Since all the States save Delaware (15 Stat., 36) elected to handle it that way, it was unnecessary to reestablish the internal revenue organization under the authority of the Act of August 5, 1861. It is noted that section 56 created the office of "Commissioner of Taxes," with powers and duties very similar to those of the "Commissioner of the Revenue," of earlier periods. No appointment of Commissioner of Taxes was ever made. (Report on the Finances, volume 22, page 90.) There were obvious objections to the title "Commissioner of Taxes." The office of Commissioner of Customs had been established by the Act of March 3, 1849 (9 Stat., 396). Customs duties are a form of taxes. Since the Act of August 5, 1861, was but a poor relation of the greatly enlarged revenue measure of 1862, we shall devote detailed attention to the latter.

ACT OF JULY 1, 1862

It has been said that the Act of July 1, 1862 (12 Stat., 432), is the foundation of the present internal revenue system. At that time it represented the accumulated procedural knowledge and experience of the National Government. Geography, ease of communications, and character of the tax are decisive factors in the form of organization and kind of administration. For example, do the field officers have authority to examine returns and determine taxes in their own right or under delegation from the central office? That question is important and it has had an interesting evolution in this country.

The first paragraph of the new Act of July 1, 1862, created the office of Commissioner of Internal Revenue and prescribed its duties. Quoting in full:

CHAP. CXIX.—An Act To provide internal revenue to support the Government and pay interest on the public debt.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of superintending the collection of internal duties, stamp duties, licenses, or taxes imposed by this Act, or which may be hereafter imposed, and of assessing the same, *an office is hereby created in the Treasury Department to be called the office of the Commissioner of Internal Revenue; and the President of the United States is hereby authorized to nominate, and, with the advice and consent of the Senate, to appoint, a Commissioner of Internal Revenue,* with an annual salary of four thousand dollars, who shall be charged, and hereby is charged, under the direction of the Secretary of the Treasury, with preparing all the instructions, regulations, directions, forms, blanks, stamps, and licenses, and distributing the same or any part thereof, and all other matters pertaining to the

assessment and collection of the duties, stamp duties, licenses, and taxes, which may be necessary to carry this Act into effect, and with the general superintendence of his office, as aforesaid, and shall have authority, and hereby is authorized and required, to provide proper and sufficient stamps or dies for expressing and denoting the several stamp duties, or the amount thereof in the case of percentage duties, imposed by this Act, and to alter and renew or replace such stamps from time to time, as occasion shall require; and the Secretary of the Treasury may assign to the office of the Commissioner of Internal Revenue such number of clerks as he may deem necessary, or the exigencies of the public service may require, and the privilege of franking all letters and documents pertaining to the duties of his office, and of receiving free of postage all such letters and documents, is hereby extended to said commissioner. [Italics for emphasis.]

Since the creation of the office by the Act of July 1, 1862, there have been 28 incumbents appointed and confirmed as Commissioner of Internal Revenue. There follows a list of all the Commissioners to date:

Name [1]	State	Service	
		From	To
George S. Boutwell	Massachusetts	July 17, 1862	Mar. 4, 1863
Joseph J. Lewis	Pennsylvania	Mar. 18, 1863	June 30, 1865
William Orton	New York	July 1, 1865	Oct. 31, 1865
Edward A. Rollins	New Hampshire	Nov. 1, 1865	Mar. 10, 1869
Columbus Delano	Ohio	Mar. 11, 1869	Jan. 2, 1871
Alfred Pleasonton	New York	Jan. 3, 1871	Aug. 8, 1871
John W. Douglass	Pennsylvania	Aug. 9, 1871	May 14, 1875
Daniel D. Pratt	Indiana	May 15, 1875	July 31, 1876
Green B. Raum	Illinois	Aug. 2, 1876	Apr. 30, 1883
Walter Evans	Kentucky	May 21, 1883	Mar. 19, 1885
Joseph S. Miller	West Virginia	Mar. 20, 1885	Mar. 20, 1889
John W. Mason	do	Mar. 21, 1889	Apr. 18, 1893
Joseph S. Miller	do	Apr. 19, 1893	Nov. 26, 1896
W. St. John Forman	Illinois	Nov. 27, 1896	Dec. 31, 1897
Nathan B. Scott	West Virginia	Jan. 1, 1898	Feb. 28, 1899
George W. Wilson	Ohio	Mar. 1, 1899	Nov. 27, 1900
John W. Yerkes	Kentucky	Dec. 20, 1900	Apr. 30, 1907
John G. Capers	South Carolina	June 5, 1907	Aug. 31, 1909
Royal E. Cabell	Virginia	Sept. 1, 1909	Apr. 27, 1913
William H. Osborn	North Carolina	Apr. 28, 1913	Sept. 25, 1917
Daniel C. Roper	South Carolina	Sept. 26, 1917	Mar. 31, 1920
William M. Williams	Alabama	Apr. 1, 1920	Apr. 11, 1921
David H. Blair	North Carolina	May 27, 1921	May 31, 1929
Robert H. Lucas	Kentucky	June 1, 1929	Aug. 15, 1930
David Burnet	Ohio	Aug. 20, 1930	May 15, 1933
Guy T. Helvering	Kansas	June 6, 1933	Oct. 8, 1943
Robert E. Hannegan	Missouri	Oct. 9, 1943	Jan. 22, 1944
Joseph D. Nunan, Jr.	New York	Mar. 1, 1944	June 30, 1947
George J. Schoeneman	Rhode Island	July 1, 1947	

[1] In addition, the following were Acting Commissioners during periods of time when there was no real Commissioner holding the office: John W. Douglass, of Pennsylvania, from November 1, 1870, to January 2, 1871; Henry C. Rogers, of Pennsylvania, from May 1 to May 10, 1883; John J. Knox, of Minnesota, from May 11 to May 20, 1883; Robert Williams, Jr., of Ohio, from November 28 to December 19, 1900; Millard F. West, of Kentucky, from April 12 to May 26, 1921; H. F. Mires, of Washington, from August 15 to August 20, 1930; Pressly R. Baldridge, of Iowa, from May 15 to June 5, 1933; and Harold N. Graves, of Illinois, from January 23 to February 29, 1944.

To superintend the collection and assessment of internal duties is to superintend the entire operation, including the investigative, determinative, and physical phases of the undertaking; but it does not imply that the superintendent has authority himself to perform the acts of assessment and collection of taxes. The statute will have many things to say about that distinction. In the light of historical development, particularly of the administrative provisions of the direct tax, the word "assessment" embraced the powers of both investigation and determination of the liability. The control over lists or returns of taxable objects and actions, and the issuance of licenses, will constitute administrative control over most of the internal taxes at that time. The Act of July 1, 1862, covers such matters in detail.

FORM OF ORGANIZATION

For the purpose of *assessing*, *levying*, and *collecting* all the taxes imposed by the Act, the President was authorized to divide the country into convenient *collection districts* and to appoint, with the consent of the Senate, "an *assessor* and a *collector* for each such district" (section 2). Each assessor shall divide his district into a convenient number of assessment districts, within each of which he shall appoint one assistant assessor. Each assessor and assistant assessor was obliged to take an oath or affirmation that he would execute the duties of his office "without favor or partiality, and that I will do equal right and justice in every case in which I shall act as assessor" (section 3). Evidently the nondiscriminatory aspect of administration was regarded as important. Each collector was authorized to appoint "as many deputies as he may think proper"; to pay them himself; and also to revoke their appointments, giving only such notice as the Commissioner shall prescribe. The deputy had the same authority to collect as the collector, but the collector was responsible "for every act done as deputy collector by any of his deputies whilst acting as such" (section 5).

Thus far the set-up is exactly as it was under the Act of January 9, 1815 (3 Stat., 164). The old "principal assessor" becomes the "assessor." The "assistant assessors" retain their names. The "collector" remains the fiscal agent, while the job of "deputy collector" is unchanged and has continued such to this day. The duties of the officials, above mentioned, under the Act of July 1, 1862, are substantially those of their counterparts nearly 50 years before.

During the long period of internal revenue inactivity, there had arisen an office of Solicitor of the Treasury, whose prescribed duties in the new Act were very limited. For example, he *approved* the sureties on the collectors' bonds, which bonds were *filed* in the office of the First Comptroller (section 4). Upon failure of a collector to collect or to render his account, it became the duty of the First Comptroller to report same to the Solicitor of the Treasury, who issued a "warrant of distress" against such delinquent collector and his sureties, directed to the marshal of the district (section 25).

A close attention to the statutory procedure laid down in the Act of July 1, 1862, convinces that the "assessors" and "assistant assessors" possessed the investigative and tax determining authority in their own right. First, it was the duty of any person liable to any tax imposed by the Act, on or before a certain date, "to make a *list*

or *return* to the assistant assessor" of the annual income, the objects charged with tax, and the several rates and aggregate amount for which such person was "liable to be assessed" under the Act, according to the forms and regulations to be *prescribed* by the Commissioner under the *direction* of the Secretary (section 6). These instructions, regulations, and directions shall be binding on each assessor and his assistants, and on each collector and his deputies. Here the powers of superintendence are at work. Pursuant to these instructions, the assessors caused their assistant assessors to proceed through every part of their respective districts; to *inquire* after and concerning all persons owning, possessing, or having the care or management of any property or objects liable to tax, including all persons liable to pay a license duty; "AND TO VALUE AND ENUMERATE THE SAID OBJECTS OF TAXATION." To aid him in reaching his determinations, the assistant assessor could have reference to the assessment lists of the States, or to any other records and documents; or could resort to all other lawful ways and means, especially to the written list, schedule, or return required by this Act to be made out and delivered to him (section 7). These were powers of both investigation and determination of the amount of tax liability. The statute granted them to the assistant assessor. As Commissioner Lewis said in Special No. 12, dated January 9, 1865, "Let assistant assessors understand that it is their business not merely to take returns, *but to ascertain whether they are correct*, and when they have reason to believe them incorrect, to act as already indicated."

On page 37 is a facsimile of the notice served by the assistant assessors under the statutes as quoted and should prove an interesting exhibit of the course of events during those early years in the life of the Internal Revenue Service.

If any person failed to make and exhibit a written list as required, and shall consent to disclose the particulars, the assistant assessor would make one out for him, read it back to him, and if consented to and signed, would be received as the list of such person (section 8). Upon conviction for delivering a fraudulent list, the valuation and enumeration shall be made upon lists to be made out by the assessor or assistant assessor according to the best information he can obtain; and from the valuation and enumeration so made there shall be no appeal (section 9).

If any person knowingly refused or neglected to give such list, it was the duty of the *assessor*, "to enter into and upon the premises, if it be necessary, of such persons so refusing or neglecting, and to make, according to the best information which he can obtain, and on his own view and information," such lists as are required. The lists so made and subscribed by the assessor shall be taken and reputed as good and sufficient lists of such person (section 11). Here was complete investigative authority to serve as a basis for sound conclusions and determinations respecting tax liability.

After collecting the lists, above mentioned, the assistant assessors proceeded to arrange them and to make two general lists, the first of which shall exhibit in alphabetical order the names of all *resident* persons liable to pay any duty, tax, or license, '*together with the value and assessment, or enumeration*, as the case may require, of the objects liable to duty or taxation * * * *with the amount of duty or tax payable thereon.*" The second general list contained the

U. S. INTERNAL REVENUE.

OFFICE OF ASSISTANT ASSESSOR,
1st *Division*, 11th *Collection District, State of Indiana.*
NOBLESVILLE, April 7, 1864.

To Henry Roberts

YOU are hereby notified and required to make out a list, or lists, of all incomes, property, goods, wares and merchandise, articles or objects, owned by you, or of which you have the care or management, subject to duty or tax, together with the amount due for licenses under and in conformity with "An act to provide internal revenue to support the Government, and to pay interest on the public debt," approved July 1st, 1862, and an act amendatory thereof, approved March 3, 1863, and present the same to me, at my Office, in the town of Noblesville, on or before the 1st day of May next.

Mode of Estimating Income.

Every person must report on page 2 of the accompanying blank (No. 24,) opposite the proper items, his or her *gross* income, whether derived from any kind of *Property, Rents, Interests, Dividends, Salaries, Profession, Trade, Employment, Vocation*, or from *any other source whatever*, from the 1st day of January, 1863, to the 31st day of December, 1863, both days inclusive, and it must be estimated as if nothing had been *used* or *expended* for any purpose whatsoever. The value of all articles of produce *consumed* by the producer in living, as well as otherwise disposed of, must be included, and produce on hand the 31st day of December, 1863, must be estimated at the then market price of the same. Gains in the *growth of live stock*, whether disposed of or not, is considered a source of income.

Exemptions and Deductions.

See Schedule on page 3 of the accompanying Blank, and fill it opposite the proper items. In item No. 2 in same schedule the words "necessary repairs" are held to mean "*ordinary annual repairs*," but not to include any *new structures or improvements*.

Licenses.

Every person whose license expires on the 1st day of May next, must apply for a new license on or before that day, of which notice is hereby given.

Carriages, Spring Wagons, &c.

All persons who, on the 1st day of May, 1864, are owners of any Carriages, Buggies, or spring Wagons, worth including the harness therewith, $75 or over, "kept for use or hire," or of any other article or object liable to a special tax, must report the same to me, together with other lists, on or before that date.

Slaughtered Animals.

Hogs, sheep and cattle slaughtered, (except that 6 of each for consumption are exempt,) and not heretofore reported, must be reported by the 1st day of May next.

By *special instructions*, all persons failing to report in time will be assessed with the penalties.
When it is more convenient, the Blank, after being filled and subscribed, may be sent to me by mail.

JOSEPH R. GRAY, Assistant Assessor.

Noblesville, ——————————, 1864.

NOTE.—All are requested to return their Lists at the earliest day possible after receiving this notice, without waiting until May. Such a course will make no difference in the time for payment, and will greatly reduce the expense of assessing.

nonresidents. The forms of the general list were devised and prescribed by the assessor, under the direction of the Commissioner. The assistant assessors then delivered said lists to the assessor (section 14).

When the assessors for each collection district received the lists from the assistant assessors, they advertised the time and place when and where "the lists, valuations, and enumerations" may be examined; and said lists remained open for examination for 15 days. Thus, unqualified publicity of returns is an old story. The advertisement also stated when and where (after the expiration of said 15 days) "*appeals* will be received and determined relative to any erroneous or excessive valuations or enumerations by the assistant assessors." The statute required the assessor, at the time fixed for hearing such *appeal*, to submit the proceedings of the assistant assessors, and the lists taken and returned, "to the inspection of

any and all persons who may apply for that purpose." Such publicity was as unqualified as the public records to-day of proceedings before The Tax Court of the United States. The assessor was authorized "to hear and determine, in a summary way, according to law and right, upon any and all appeals which may be exhibited against the proceedings of the said assistant assessors" (section 15).

All appeals to the assessor were made in writing; specified the particular cause, matter, or thing concerning which a decision was requested; and stated the ground or principle of inequality or error complained of. On an appeal respecting the valuation or enumeration of property, or objects liable to tax, the question to be determined by the assessor was whether the valuation complained of was in a just relation or proportion to other valuations in the same assessment district, and whether the enumeration was correct. The assessor had "power to reexamine and equalize the valuations as shall appear just and equitable"; but no valuation or enumeration could be increased without a previous notice. This administrative appeal is set forth in section 15 of the Act. It was an appeal to the official who had the statutory authority to determine the tax liability. (Cf. section 250(d), Revenue Act of 1921; section 1301(d), Revenue Act of 1918. Under customs duties, note appeal to the Secretary, Act of June 30, 1864, 13 Stat., 202, 215.)

Immediately after the expiration of the time for hearing appeals, and, from time to time, as duties, taxes, or licenses became liable to be assessed, it was the duty of the assessors to make out lists containing the names of the taxpayers "together with the sums payable by each." The assessors delivered these lists to the collectors.

On receiving a list, the collector subscribed three receipts. One was made on a copy of the list, which was returned to the assessor and held open to the inspection of anyone so applying. The other two receipts were given on aggregate statements, one of which was transmitted to the Commissioner and the other to the First Comptroller.

The collectors then gave notice that the duties "have become due and payable." The statute provides in detail the procedure for the collector. If the taxes are not paid in time, the collector makes *demand*. With respect to all duties or taxes as are not included in the annual lists, and all taxes and duties the collection of which is not otherwise provided for, the collector made demand within 10 days after receiving the list from the assessor. If the annual and other duties are not paid within 10 days after such demand, the collector was empowered to collect by distraint and sale. The collector's authority in this regard is plenary and explicit. He is collecting a debt due the United States by summary procedure. He may seize and sell goods or real estate for the purpose. He may even purchase the seized property in behalf of the United States; "and all property so purchased may be sold by said collector under such regulations as may be prescribed by the Commissioner of Internal Revenue" (section 20). Section 24 credited the collector with the amount of all property purchased by him for the use of the United States, provided he accounted for and paid over the proceeds thereof upon a resale. Sections 20 and 24 apparently assume that the Solicitor of the Treasury held no statutory authority over the subject matter

under consideration. An internal revenue Act governs as to internal revenue matters.

In addition, it was the duty of the collectors and they were specifically authorized to collect all the duties and taxes imposed by the Act—

> *, * * and to *prosecute* for the recovery of the same, *and* for the recovery of *any* sum or sums which may be forfeited by virtue of this Act; *and* all fines, penalties, and forfeitures which may be incurred or imposed by virtue of this Act, shall and may be sued for and recovered, in the name of the United States, or of the collector within whose district any such fine, penalty, or forfeiture shall have been incurred, *in any proper form of action*, or by any appropriate form of proceeding. (Section 31.) [Italics for emphasis.]

This is a statutory mandate reposing in the collector the performance of acts directed to the enforcement of penal statutes. The collector on his own initiative could *prosecute* for the recovery of the simple debt (taxes) or for the recovery of fines, penalties, and forfeitures. This is evidenced by Decision No. 99 issued by the Office of Internal Revenue in April, 1863, concerning Proceedings against delinquents and violators of the excise laws. Decision No. 99 is here quoted in full:

> Whenever a collector has occasion to commence proceedings for the recovery of sums due on assessments or on penalties, he will report the same to the United States district attorney for the district, whenever the office of such attorney is not too remote to permit the reference of the case to him.
>
> When a consultation can not be had with the district attorney without great inconvenience, the collector is authorized to employ counsel to initiate such proceedings as may be necessary, who will report to the district attorney.
>
> The proceedings will, in all cases, be commenced in the name of the United States, and in the district or circuit court of the United States, and the management of every cause so commenced will be intrusted to the district attorney for the district.
>
> NOTE.—This decision does not relate to distraint.

If section 31, Act of July 1, 1862, as regards its subject matter, did not repeal by implication whatever statutory prerogatives may have then been exercised by the Solicitor of the Treasury over internal revenue suits and frauds, under authority of the Act of May 29, 1830 (4 Stat., 414, supra), then there was at least, and to that extent, a situation of concurrent authority. The foregoing decision No. 99 was issued by the Office of Internal Revenue one month *subsequent* to the Act of March 3, 1863 (12 Stat., 737, infra), granting the Solicitor of the Treasury a general supervision over frauds upon the revenue, and for the prosecution of persons charged with the commission of such offenses.

Of great assistance to assessors and collectors in determining and collecting tax liabilities was section 27, which provides:

> *And be it further enacted*, That a collector or deputy collector, assessor or assistant assessor, shall be authorized to enter, in the daytime, any brewery, distillery, manufactory, building, or place where any property, articles, or objects, subject to duty or taxation under the provisions of this Act, are made, produced, or kept, within his district, so far as it may be necessary for the purpose of examining said property, articles, or objects, or inspecting the accounts required by this Act from time to time to be made. And every owner of such brewery, distillery, manufactory, building, or place, or persons having the agency or superintendence of the same, who shall refuse to admit such officer, or to suffer him to examine said property, articles, or objects, or to inspect said accounts shall, for every such refusal, forfeit and pay the sum of five hundred dollars.

The collector was charged with the whole amount of taxes receipted by him. He rendered monthly statements of collections to the Com-

missioner. A delinquent collector was the subject of summary remedies. His property and real estate could be seized and sold in satisfaction of the taxes for which he remained accountable.

A limited authority to make refunds was granted to the Commissioner by section 35, which reads as follows:

> *And be it further enacted*, That when any duty or tax shall have been paid by levy and distraint, any person or persons or party who may feel aggrieved thereby may apply to the assessor of the district for relief, and exhibit such evidence as he, she, or they may have of the wrong done, or supposed to have been done, and after a full investigation the assessor shall report the case, with such parts of the evidence as he may judge material, including also such as may be regarded material by the party aggrieved, to the Commissioner of Internal Revenue, who may, if it shall be made to appear to him that such duty or tax was levied or collected, in whole or in part, wrongfully or unjustly, certify the amount wrongfully and unjustly levied or collected, and the same shall be refunded and paid to the person or persons or party as aforesaid, from any moneys in the Treasury not otherwise appropriated, upon the presentation of such certificate to the proper officer thereof.

In this situation, i. e., where a tax was wrongfully collected by distraint, the Commissioner in his own right and by statute, acquires jurisdiction to make a determination on the merits in a specific case. It is a limited authority to determine tax liability and to make refunds. The Commissioner was granted complete authority to make refunds by the Act of June 30, 1864 (13 Stat., 223, 239, sec. 44).

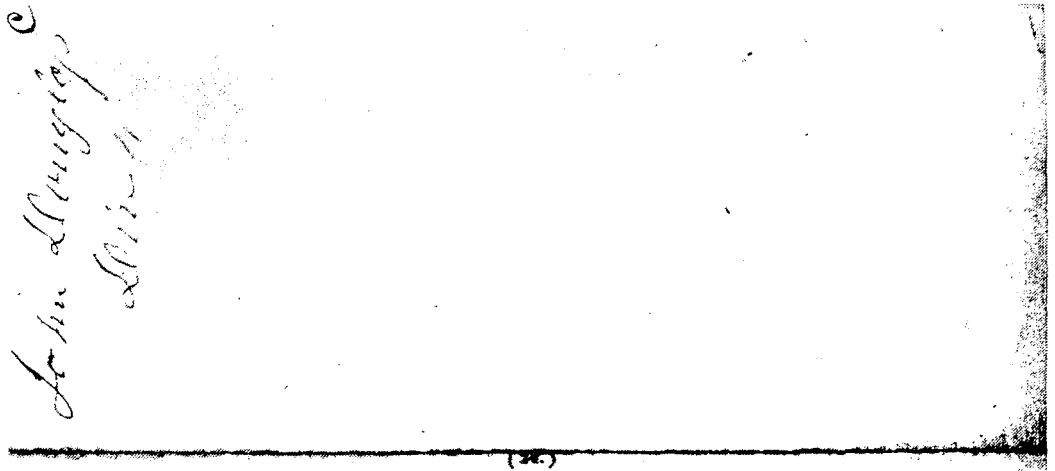
AN INTERNAL REVENUE SYSTEM

The assortment of internal duties levied by the Act of July 1, 1862, was imposing. It is an internal revenue system far beyond that envisioned by former Secretary Dallas. By broad classifications, they were:

1. Licenses for distilling.
2. Duties on distilled spirits.
3. Duties on beer, ale, etc.
4. Licenses to carry on certain trades or occupations.
5. Duties on manufactures, articles, and products.
6. Tax on auction sales.
7. Carriages, yachts, billiard tables, and plats.
8. Slaughtered cattle, hogs, and sheep.
9. Railroads, steamboats, and ferryboats. (This tax was a percentage of gross receipts. It was later extended to include express companies, telegraph companies, and insurance companies (Act of June 30, 1864, 13 Stat., 276).)
10. Railroad bonds.
11. Banks, trust companies, savings institutions, and insurance companies.
12. Salaries and pay of officers and persons in the service of the United States, and passports.
13. Advertisements.
14. Income duty.
15. Stamp duties.
16. Legacies and distributive shares of personal property.

The taxable field was further enlarged by the amendatory Act of March 3, 1863 (12 Stat., 713), and by the new Act of June 30, 1864 (13 Stat., 276).

The preparation of the many forms to be used in administering the foregoing system of internal wartime taxation placed a staggering burden upon the Treasury Department and the Commissioner's office. The lists or returns with respect to the direct tax and the taxes under items numbered 4, 6, 8, 9, 13, 14, and 16, supra, were filed with, or registration made with, the assistant assessors. As to the tax under item 5, the taxpayer made returns in form and detail as were required from time to time by the Commissioner. However, the returns or forms with respect to the taxes under items numbered 10, 11, and 12 were filed with the Commissioner of Internal Revenue. (Certain changes in the mode of assessment and collection of the taxes imposed on banks, insurance, railroad companies, etc., were made by the Act of June 30, 1864, which in general required the returns to be filed with the assessor and payment to be made to the collector.



(2.)

INCOME TAX: 1864.

By the sixth section of the Act of July 1, 1862, it is made the duty of any person liable to the income tax, on or before the first Monday of May in each year, to make a list or return of the amount of his annual income to the assistant assessor of the district in which he or she resides.

Every person who shall fail to make such return by the day specified, will be liable to be assessed by the assessor according to the best information which he can obtain; and in such case the assessor will add fifty per centum to the amount of the items of such list.

Every person who shall deliver to an assessor any false or fraudulent list or statement, with intent to evade the valuation of his income, is subject to a fine of five hundred dollars; and in such case the list will be made out by the assessor or assistant assessor, and from the valuation so made there can be no appeal.

As it is not impossible that certain changes in the rates of income tax may be adopted by the present Congress, the rate to which any income is liable cannot now be stated. The proposed changes, however, will not affect the principles upon which the return is to be made.

In no case, whatever may be the rate of tax to which an income is liable, is a higher rate than 1½ per cent. to be assessed upon that portion of income derived from interest upon notes, bonds, or other securities of the United States. In order to give full effect to this provision, it is directed that when income is derived partly from these and partly from other sources, the $600 and other allowances made by law shall be deducted, as far as possible, from that portion of income derived from other sources.

When a married woman is entitled to an income which is secured to her own use, free from any control of her husband, the return should be made in her own name, and the assessment will be made separate from that made against the husband. [redacted] deduction of $600—that being the average fixed by law as an estimated compensation for the expenses of maintaining a family. Where they live apart, by divorce or under contract of separation, they will be each entitled to a deduction of $600.

Guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, are required to make return of the income belonging to minors or other persons which may be held by them in trust; and the income tax will be assessed upon the amount returned, after deducting such sums as are exempted by law: Provided, That the exemption of six hundred dollars shall not be allowed on account of any minor or other beneficiary of a trust, except upon the statement of the guardian or trustee, made under oath, that the minor or beneficiary has no other income from which the said amount of six hundred dollars may be exempted and deducted. Every fatherless child who is possessed of an income in his own right is entitled to the exemption.

On the following pages will be found detailed statements to assist in making out returns. The specific statements on pages 2 and 3 are intended merely for the convenience of the tax-payer, and must not be exhibited to the inspection of any one. The income being ascertained in the mode indicated, the return may be made in gross, as indicated on page 4; but in such case, if error should occur in the return, an application for correction will stand in much less favorable position than if the full return be made on pages 2 and 3.

See Circular No. 16, issued from the Office of Internal Revenue, Washington, July 6, 1864; also Circular No. 48, July 20, 1866.) The practice of having returns filed direct with the Commissioner in Washington with monetary remittances had great administrative possibilities at that time. It became necessary to appoint a "cashier of internal duties," who had charge of the moneys received in the office of the Commissioner. (Act of March 3, 1863, 12 Stat., 726, section 21.) The Commissioner and the clerks in his office would fall natu-

2

DETAILED STATEMENT OF SOURCES OF INCOME AND THE AMOUNT DERIVED FROM EACH, DURING THE YEAR 1863.

☞ *Gross Amounts must be stated.* ☜	AMOUNTS.	
1. Income of a resident in the United States from profits on any trade, business, or vocation, or any interest therein, wherever carried on	$ 657	41
2. From rents, or the use of real estate	1233	00
3. From interest on notes, bonds, mortgages, or other personal securities, not those of the United States		
4. From interest on notes, bonds, or other securities of the United States		
5. From interest or dividends on any bonds or other evidences of indebtedness of any railroad company or corporation		
6. From interest or dividends on stock, capital, or deposits in any bank, trust company, or savings institution, insurance or railroad company, or corporation	25	00
7. From interest on bonds or dividends on stock, shares or property in gas, bridge, canal, turnpike, express, telegraph, steamboat, ferry-boat, or manufacturing company or corporation, or from the business usually done thereby		
8. From property, securities, or stocks owned in the United States by a citizen thereof residing abroad, not in the employment of the Government of the United States		
9. From salary other than as an officer or employee of the United States		
10. From salary as an officer or employee of the United States		
11. From farms or plantations, including all products and profits		
12. From advertisements		
13. From all sources not herein enumerated		
TOTAL	$ 1915	41
	300	cc
	10215, 41	

rally into the practice of examining and auditing such returns. This experience undoubtedly created in the central office ideas respecting centralized control over such work. As the measure of taxation swings from tangible things to business activity and accounting concepts, it becomes simpler, if not necessary, to center in one official the authority to make inquiries and to determine the correct liability. Uniform interpretations and policies, binding on all, can be assured from the central authority.

3

DETAILED STATEMENT OF DEDUCTIONS AUTHORIZED TO BE MADE.

	AMOUNTS.	
1. Expenses necessarily incurred and paid in carrying on any trade, business, or vocation, such as rent of store, clerk hire, insurance, fuel, freight, &c		
2. Amount actually paid by a property owner for necessary repairs, insurance, and interest on incumbrances upon his property	100	
3. Amount paid by a farmer or planter for—		
(a) Hired labor, including the subsistence of the laborers		
(b) Necessary repairs upon his farm or plantation		
(c) Insurance, and interest on incumbrances upon his farm or plantation		
4. Other national, state, and local taxes assessed and paid for the year 1863, and not elsewhere included		
5. Amount actually paid for rent of the dwelling-house or estate occupied as a residence		
6. Exempted by law, (except in the case of a citizen of the United States residing abroad,) $600	600	00
7. Income from interest or dividends on stock, capital, or deposits in any bank, trust company, or savings institution, insurance, or railroad company, from which 3 per cent. thereon was withheld by the officers thereof		
8. Income from interest on bonds, or other evidences of indebtedness of any railroad company or corporation, from which 3 per cent. thereon was withheld by the officers thereof		
9. Salaries of officers, or payments to persons in the civil, military, naval, or other service of the United States, in excess of $600		
10. Income from advertisements, on which 3 per cent. was paid		
TOTAL	700	00

I hereby certify *that the following is a true and faithful statement of the gains, profits, or income of* John Douglass *of the* City *of* Albany *in the County of* Albany, *and State of* New York, *whether derived from any kind of property, rents, interest, dividends, salary, or from any profession, trade, employment, or vocation, or from any other source whatever, from the* 1st *day of January to the* 31st *day of December,* 1863, *both days inclusive, and subject to an Income Tax under the excise laws of the United States:*

	RATE.	AMOUNT.		AMOUNT OF TAX.	
Income subject to	3 per cent.				
Do. subject to	5 per cent.	10215	44	510	75
Income derived from interest upon notes, bonds, or other securities of the United States, subject to	1½ per cent.				
Income from property in the United States owned by a citizen thereof residing abroad, subject to	per cent.				
Income exceeding upon a portion of which a tax of 3 per cent. has already been paid, subject to	per cent.				
TOTAL				510	75

(Signed) John Douglass

Dated at Albany this 12 day of May, 1864.

Sworn and subscribed before me this 12 day of May, 1864.

Wilson Bruce,
Assistant Assessor.

ACT OF JUNE 30, 1864, AS AMENDED BY ACT OF JULY 13, 1866

The Act of July 1, 1862, as amended, was repealed and supplanted by the monumental Revenue Act of June 30, 1864 (13 Stat., 223–306). Although the office of Commissioner of Internal Revenue had been in active existence for two years, the Act of June 30, 1864, opens (page 223) with a slightly revised declaration of his powers and duties. The real significance of said restatement of powers and duties is that it emphasizes by reenactment the statutory fact that the Commissioner, under the direction of the Secretary of the Treasury, is charged with *all* matters pertaining to the assessment and collection of the internal duties imposed by the Act, or which may hereafter be imposed. Section 174 grants blanket authority to the Commissioner, under the direction of the Secretary, to make all regulations not otherwise specifically provided for, as may be necessary "by reason of the alteration of the laws in relation to internal revenue, by virtue of this Act" (13 Stat., 304).

Section 176 provided that whenever the mode or time of assessment or collection of any tax or duty imposed by law is not therein provided, the same shall be established by regulation of the Secretary of the Treasury. (A later Act provided for the exercise of that authority by regulation of the Commissioner (15 Stat., 166).) The clear implications of section 176 are that Congress retains the authority over the *mode* of assessment and collection of taxes.

The Act of June 30, 1864, largely restates the organization and procedure of the Act of July 1, 1862. It gives greater recognition to the true worth of the office of Commissioner. Subject to regulations prescribed by the Secretary, the Commissioner was authorized to make refunds and to compromise all suits relating to internal revenue. Section 44 reads:

> * * * That the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, shall be, and is hereby, authorized, on appeal to him made, to remit, refund, and pay back all duties erroneously or illegally assessed or collected, and all duties that shall appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected, and also repay to collectors or deputy collectors the full amount of such sums of money as shall or may be recovered against them or any of *them* in any court, for any internal duties or licenses collected by them, with the costs and expenses of suit, and all damages and costs recovered against assessors, assistant assessors, collectors, deputy collectors, and inspectors, in any suit which shall be brought against them or any of them by reason of anything that shall or may be done in the due performance of their official duties, *and also compromise such suits and all others relating to internal revenue.* And all judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the collector as internal duties are required to be paid; and all sums of money which the Commissioner is authorized to pay by virtue of this section shall be paid by drafts drawn on collectors of internal revenue. [Italics for emphasis.]

Compromise authority. — From the early history of the United States Government, it was found necessary to clothe the executive departments with the power to compromise. It is independent of the pardoning power of the President, and under the internal revenue laws was given the Commissioner, by two stages, always within such rules as may be prescribed by the Secretary. Section 44, supra, first gave the Commissioner authority (subject to regulations prescribed by the Secretary) to compromise all *suits* relating to internal revenue. This power was rounded out by the Act of July 13, 1866 (sec-

tion 8, 14 Stat., 146), which granted the Commissioner authority, under the Secretary's regulations, to compromise *any case* arising under the internal revenue laws, *whether pending in court or otherwise.*

Refund authority. — The authority to abate outstanding assessments and to refund taxes collected is a substantial segment of the tax-determining function. Section 44 granted that authority to the Commissioner "on appeal made to him." Although claims in abatement and for refund are thus classed as being with the Commissioner on appeal, they are not strictly speaking part of an appellate procedure. In a practical sense section 44 made the Commissioner, on a large scale, the one and only national tax determinator of internal revenue.

Section 11 removes all question as to whether the income tax was administered by the assessors and assistant assessors. The list or return "of the amount of annual income" must be made to the assistant assessor. The *appeal* to the assessor is now subject to rules and regulations prescribed by the Commissioner (section 118).

The collector continues to purchase property in distraint proceedings "in behalf of the United States," and to sell same "under such regulations as may be prescribed by the Commissioner of Internal Revenue" (sections 29, 30, 41, 48). The summary proceedings of distraint and sale never seem to have been under the jurisdiction of the Solicitor (section 119). The collector continues to *prosecute* for the recovery of forfeitures in internal revenue (sections 41 and 179).

The duty on the succession to real estate (13 Stat., 287) develops new procedures. In very difficult valuation cases, where the Commissioner thinks it expedient, he may compound the duty payable on the succession upon such terms as he shall think fit; also, in his discretion, to commute the duty presumptively payable in respect of a succession in expectancy, causing a present value to be set upon such presumptive duty, "regard being had to the contingencies affecting the liability to such duty" (sections 143 and 144). This is the settlement authority. After appeal to the assessor in the ordinary *succession* case, if the taxpayer is "still dissatisfied" he may "appeal from such decision to the Commissioner of Internal Revenue, and furnish a statement of the grounds of such appeal to the Commissioner, whose decision upon the case, as presented by the statements of the assessor or assistant assessor and such party, *shall be final*" (section 149).

The Act of March 3, 1865 (13 Stat., 471), amended the Act of June 30, 1864; section 1 amended section 118 of the earlier Act, relating to *income* tax, and provided that any person feeling aggrieved by the decision of the assistant assessor may appeal to the assessor, and his decision shall be *final*, "unless reversed by the Commissioner." The form, time, and manner of such proceedings were subject to rules and regulations "prescribed by the Commissioner of Internal Revenue" (13 Stat., 481). The same procedure respecting income taxes was reenacted in the Act of March 2, 1867 (14 Stat., 479–480). It is not clear from the wording whether the statute granted an aggrieved income taxpayer a right of *appeal* to the Commissioner, or was merely designed to give the Commissioner the right of *review* of all such cases appealed to the assessor from the assistant assessor.

In actual practice it seems to have been looked upon as an appeal to the Commissioner; and, in either view, the right to reverse the assessor in a specific case means the authority to determine the tax liability in that case. The Act of March 2, 1867 (14 Stat., 480), amends the procedure to provide that no penalty shall be assessed for making a false or fraudulent *income* return, except after reasonable notice of the time and place of hearing, to be regulated by the Commissioner "so as to give the person charged an opportunity to be heard." The income tax was imposed annually until and including the year 1870 (14 Stat., 138).

In 1868 a feeling of uneasiness is evidenced. Something is wrong, somewhere. Drastic action was required. First, heavy penalties were laid upon revenue officers or agents for gross neglect of duty or for defrauding the United States. Furthermore, the same penalties applied if he had knowledge of a fraud committed by any person against the United States under any revenue law, and failed to report it in writing to his next superior officer *and* to the Commissioner. (Act of March 31, 1868, 15 Stat., 60.) No compromise or discontinuance of any prosecution under that Act could be had without the permission in writing of the Secretary of the Treasury and the Attorney General.

THE ACT OF JULY 20, 1868

The Act of July 20, 1868 (15 Stat., 125, section 49), authorized the Secretary, upon recommendation of the Commissioner, to appoint not exceeding 25 officers, to be called "supervisors of internal revenue," each one of whom was assigned to a designated district. It was the duty of every supervisor of internal revenue, under the direction of the Commissioner, to see that all laws and regulations relating to the collection of internal taxes are faithfully executed and complied with; to aid in the prevention, detection, and punishment of any frauds in relation thereto; and to examine into the efficiency and conduct of all officers of internal revenue within his district. It was his duty to report in writing to the Commissioner any neglect of duty, incompetency, delinquency, or malfeasance in office of any internal revenue officer within his district. He also had power to transfer any inspector, gauger, or storekeeper from one distillery to another within his district, or to suspend them. The supervisor could also suspend any collector or assessor for fraud, gross neglect of duty, or abuse of power (section 51). Written reports were sent to the Commissioner, who took such action as he deemed proper.

The supervisor was appointed on the recommendation of the Commissioner. He was a Commissioner's man. This is the first time the Commissioner's own men were assigned to permanent stations in the field to supervise the activities of the field employees, with statutory authority to wield disciplinary power.

Section 50 of the same Act of July 20, 1868, authorized the Commissioner to employ competent "detectives," not exceeding 25 in number at any one time, and he may assign any such detectives to duty under the direction of any officer of internal revenue.

The number of supervisors was later reduced from 25 to 10 (17 Stat., 241) and their appointment changed to that by the President, with Senate confirmation. The word "detectives" was also changed to "agents."

Section 102 of the Act of July 20, 1868 (15 Stat., 166), states the Commissioner's authority to compromise in its final scope. It reads:

> That in all cases arising under the internal revenue laws where, instead of commencing or proceeding with a suit in court, it may appear to the Commissioner of Internal Revenue to be for the interest of the United States to compromise the same, he is empowered and authorized to make such compromise with the advice and consent of the Secretary of the Treasury; and in every case where a compromise is made there shall be placed on file in the office of the Commissioner the opinion of the solicitor of internal revenue, or officer acting as such, with his reasons therefor, together with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise; but no such compromise shall be made of any case after a suit or proceeding in court has been commenced, without the recommendation also of the Attorney-General: *Provided*, That it shall be lawful for the court at any stage of such suit or criminal proceedings to continue the same for good cause shown on motion of the district attorney.

Section 105 provided that all Acts and parts of Acts inconsistent with the provisions of this Act are repealed, with certain saving clauses (15 Stat., 166).

PART 5

FRAUDS UPON THE REVENUE, 1862–1947

The Report on the Finances (volume 19), by Secretary S. P. Chase, under date of December 4, 1862, briefly mentions that the "Bureau of Internal Revenue" was organized and is now actually engaged in the labors assigned to it (page 29). However, considerable space is devoted to the subject of fraudulent practices upon the customs. Secretary Chase said (pages 27–28):

> The report of the Solicitor of the Treasury, and the suggestions made by him, are entitled to consideration.
>
> During the last session the Secretary had the honor of transmitting the draft of a bill for the detection and prevention of fraudulent entries at the customhouses, and he adheres to the opinion that the provisions therein embodied are necessary for the protection of the revenue. That invoices representing fraudulent valuations of merchandise are daily presented at the customhouses is well known, and for the past year the collector, naval officer, and surveyor of New York have entertained suspicions that fraudulent collusions with some of the customs officers existed. Measures were taken by them to ascertain whether these suspicions were well founded. By persistent vigilance facts were developed which have led to the arrest of several parties and the discovery that a system of fraud has been successfully carried on for a series of years. These investigations are now being prosecuted under the immediate direction of the Solicitor of the Treasury for the purpose of ascertaining the extent of those frauds and bringing the guilty parties to punishment. It is believed that the enactment at the last session of the bill referred to would have arrested, and that its enactment now will prevent hereafter, the frauds hitherto successfully practiced.

The report of the Solicitor of the Treasury, dated November 17, 1862, serves as a picturesque backdrop to the legislation of March 3, 1863. Solicitor Edward Jordan refers to the immense accumulation on his books of outstanding judgments. He ascribes the accumulation to the state of the law relating to the compensation of district attorneys. Their compensation is measured by a fee bill. There is a fee for the prosecution of the suit for the money to judgment, and that is all. For anything that may be done afterward the district attorney receives no compensation whatever. He recommends corrective legislation, including power in the Secretary to compromise money judgments. Solicitor Jordan then discusses the subject of his greatest concern and one which will occupy his attention for several years. In reporting to Secretary Chase, he says (ibid., pages 133–134):

> Another subject which has received from me very considerable consideration is that of frauds in the importation of foreign merchandise. On the 14th of March last I had the honor of addressing you upon this subject, on the occasion of returning to you a printed communication in relation thereto, which had been addressed to you by a gentleman of New York, and which you had caused to be transmitted to me for examination, and for an expression of my views upon the suggestions contained therein. In the letter which I then addressed to you I used the following language: "I have no doubt that extensive frauds have been committed, and that their commission is still persisted in. I am persuaded that the revenue suffers loss to large amounts annually from this cause, and that every consideration of interest and of morals requires that

it should be suppressed. The Treasury needs all that is due to it, and the cause of morality is served by visiting violations of it with due punishment. Besides, it is due to honest merchants to protect them against the practices of the unscrupulous." Recent developments and further examination and reflection have only served to deepen the convictions thus expressed, and I beg to call your attention to the letter to which I refer, and to the printed communication by which it was accompanied, for a more full exposition of this subject than I shall attempt in this report.

In that letter I stated, and I take the liberty of here repeating, that first in order among the means of preventing a continuance of these frauds, I would place vigorous and unrelaxing efforts to detect and punish those which have already been committed, since nothing would have a better tendency to deter persons from committing frauds in the future than perceiving that the Government is earnestly engaged in prosecuting those committed in the past. For this purpose I think that special agents, to be employed as detectives in this branch of the Government service, might be employed with advantage, as well abroad as at home.

But I am of opinion that prospective measures of prevention may be adopted with the most salutary results. The first great object in all efforts of this character must be to secure the disclosure, in an authentic and permanent form, of the actual terms of all purchases of foreign merchandise imported into this country, and the deposition and retention of the evidence thereof in positions safe and accessible, and convenient alike for the purpose of estimating the duty and of detecting any error or fraud.

For this purpose it seems to me that the following requirements could not fail to have a most beneficial effect:

First. To require every invoice of foreign merchandise to be signed by the seller or his authorized agent, and accompanied by an affidavit or solemn declaration that it exhibits the actual terms of the purchase to which it relates, including the currency or other consideration actually paid for the merchandise.

Second. That such invoice shall be deposited, within a limited and short time after the purchase, with some officer of the Government of the United States, as the consul or commercial agent, in the country of the purchase. This should be done in order to guard against the possibility of changing the invoice between the time of the purchase and the time of making the entry of the goods, and to afford ready means of comparing the prices stated therein with the markets of the country, and in connection with the next requirement which I shall suggest, for still another and not less important purpose, viz, that of preventing the possibility of the loss or destruction of the invoice by collusion or otherwise.

Third. The exhibition and deposit with the revenue officers of a duplicate of the invoice, verified by the certificate of the consul or other officer, stating that the original has been deposited with him, and showing the time when such deposit was made.

Fourth. The affidavit of the importer as to the genuineness and truthfulness of the invoice in every respect.

In addition to these measures, I think it highly important that the whole subject of the prevention, detection, and prosecution of violations of the revenue laws be placed under the general supervision of some officer of the Treasury Department. This seems to me alike necessary for the energy and the uniformity of the measures to be adopted; and I am confident that it would prove alike conducive to the interests of the Government and of importers. As a large portion of these measures are now, and must remain, under the direction of the Solicitor of the Treasury, it would seem that there is no other officer to whom the remainder could be so appropriately assigned as to him. For the very considerable increase in labor and responsibility which would be the result, he might be allowed a very small percentage—probably one-half of 1 per cent would be sufficient—upon the moneys collected under his supervision. While such an allowance would be sufficient for his compensation, it would be too small in any particular case to excite his cupidity, and thereby cloud his judgment, or unduly influence his action.

It is very clear that frauds upon the customs were the concrete instances in mind. The internal revenue legislation and organization had been adopted only the preceding July 1, 1862, and there had been very little fresh experience on that score.

The legislation which resulted from this agitation is contained in two Acts, each approved March 3, 1863. Section 20, Act of March 3, 1863 (12 Stat., 726), enacted that the Secretary may appoint "not exceeding three *revenue agents*" whose duties shall be, under the direction of the Secretary, "to aid in the prevention, detection, and punishment of *frauds upon the revenue*," and who shall be paid such compensation as the Secretary may deem just and reasonable. This seems to be the first statute to describe a revenue officer as a "revenue agent."

On the same day, another Act of March 3, 1863, enacted legislation also aimed at frauds upon the revenue, which has occasioned a great deal of misunderstanding. It was entitled, "An Act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes" (12 Stat., 737). The "frauds upon the revenue" mentioned in the Act are frauds concerning duties on importations and illegal entries. The Act is not talking about *internal* revenue matters. Its examples of wrongdoing deal with importations of dutiable objects, and particularly with the practice of fraudulent undervaluations in the invoices of merchandise exported from Europe. The new internal revenue enactment of July 1, 1862, had been upon the books only eight months and little or no experience with fraudulent practices thereunder was available. Nevertheless, under the impetus of the amazing frauds upon the customs which had been perpetrated for many years, section 2 of the Act of March 3, 1863, reads (12 Stat., 739) :

> * * * That the Solicitor of the Treasury, under direction of the Secretary of the Treasury, shall take cognizance of all frauds or attempted frauds upon the revenue, and shall exercise a general supervision over the measures for their prevention and detection, and for the prosecution of persons charged with the commission thereof; and it shall be the duty of the collectors of the several collection districts of the United States to report to him all seizures of goods, wares, or merchandise made by them, as soon as practicable after the same are made, with written statements of the facts upon which such seizures are based. And for the purpose of enabling the Solicitor of the Treasury to perform the duties hereby enjoined upon him, the Secretary of the Treasury is hereby authorized to employ not more than three clerks, in addition to those now assigned to the office of the Solicitor by law, for such time and at such rates of compensation as he may deem for the public interest, and prescribe the compensation to be allowed to such clerks, not exceeding the amount now allowed to clerks of like class; said compensation shall be paid in the same manner as other expenses of collecting the revenue.
> (Origin of section 376, Revised Statutes; now section 326, Title 5, United States Code.)

This legislation was a partial answer to the recommendation of the Solicitor of the Treasury, above quoted, "that the whole subject of the prevention, detection, and prosecution of violations of the *revenue* laws be placed under the general supervision of some officer of the Treasury Department," on the ground that it would prove alike conducive to the interests of the Government and of *importers*. The legislation of March 3, 1863, section 10, also authorized the compromise "of *any claim* in favor of the United States," by the Secretary upon recommendation of the Solicitor. A careful reading of the Solicitor's annual report dated November 16, 1863, in recounting his prior recommendation for such statutory authority, discloses that he was talking about "*judgments* due to the United States." The

statutory word "claim" could well be construed to mean only a *judgment* claim.

Section 9 of the Act put the Solicitor in charge of the sale of lands acquired by the United States in satisfaction of debts. Section 11 granted the district attorneys 2 per centum upon all moneys collected or realized in any suit or proceeding arising under the internal revenue laws, and conducted by them, in which the United States was a party. And by section 13 the several district attorneys, on October 1 of each year, were required to make reports to the Solicitor of the number of proceedings and suits commenced, pending, and determined within his district during the past fiscal year, and also other pertinent data.

In respect of frauds upon the revenue, the authority of the Solicitor of the Treasury over the district and other attorneys was not exclusive. Section 12, Act of March 3, 1863 (12 Stat., 737, 741), provides that in all suits or proceedings *against* collectors or other officers of the revenue for any act done by them, "in which any district or other attorney shall be directed to appear on behalf of such officer by the Secretary *or* Solicitor of the Treasury, *or by any other proper officer of the Government*," such attorney shall be compensated in an amount to be approved by the Secretary. If an attorney could be directed to appear by anyone other than the Solicitor of the Treasury, the Solicitor's authority was not exclusive.

The *three clerks* above authorized by section 2, supra (12 Stat., 739), were not the same as the "three revenue agents" mentioned in the previous Act of the same day (12 Stat., 726). The three revenue agents were to *aid* in the prevention, detection, and punishment of "frauds upon the revenue." Their duties were under the direction of the Secretary, and not the Solicitor. This must have been intentional. The two Acts were approved the same day and accordingly made their respective ways through Congress at the same time. One Act of March 3, 1863 (12 Stat., 713), was an *internal* revenue measure, amendatory of the Act of July 1, 1862. The other Act of March 3, 1863 (12 Stat., 737), when referring to tax situations, speaks exclusively of customs matters. The clear inference was that as to frauds upon *internal* revenue the work would be done by the three revenue agents under the direction of the Secretary; but as to frauds upon *customs* the work would be done by the three additional clerks in the office of the Solicitor, and of course under his supervision. However, it appears that the three clerks were not named; and but two of the revenue agents appointed, who were placed under the direction of the Solicitor of the Treasury, one to reside in the city of New York and to be employed in that and other domestic ports, and the other to be employed in Europe. Their duties obviously related to frauds upon the customs. (See Report on the Finances, volume 21, page 84.)

In his report to Secretary Chase dated November 16, 1863, Solicitor Jordan comments that his duties were heavily increased by the Act of March 3 last, for the prevention of frauds upon the revenue, then dismisses the matter by saying (ibid., volume 20, page 88):

> The act to which I have just referred had not gone into full operation at the close of the last fiscal year, and I will not, therefore, now make it the subject of any remark further than that measures have been taken with a view to

give it complete effect, and that I have the fullest confidence, from the test which it has thus far undergone, that it will be found productive of all the advantages which were anticipated from its passage.

The Commissioner of Internal Revenue, however, is not satisfied with the situation. In his report dated November 30, 1863, Commissioner Joseph J. Lewis states (ibid., volume 20, page 77):

It appears to me that it would be highly eligible that authority should be devolved somewhere more distinctly than it now is, to exercise supervision over suits instituted in the name of the United States for the enforcement of penalties against delinquents under the internal revenue laws, and to compromise suits and claims when deemed for the interest of the Treasury. Suits have been instituted, and costs incurred in cases, which this office would not have advised, and money may often be saved by accepting terms of accommodation offered by parties prosecuted for penalties, where little prospect exists for recovering anything by proceeding to judgment and execution.

As the administration of the internal revenue laws is entrusted mainly to this office under your direction, I suggest that a provision that all fines, penalties, and forfeitures, or the share of them recovered under those laws, belonging to the Government, be paid into this office, and that the costs of suits and prosecutions which shall be instituted by the United States for such fines and penalties, and for internal revenue duties, be paid by this office out of such moneys as may be here received for taxes, *so that the whole subject may be brought within the cognizance of officers appointed under the internal revenue laws.* [Italics for emphasis.]

CONTEMPORANEOUS DOCUMENTS

On November 4, 1863, Commissioner Lewis issued Circular No. 12, being the regulations addressed to the collectors concerning the mode of returning uncollectible taxes, etc. See "Circulars, Specials and Decisions Issued by the Office of Internal Revenue to January 1, 1871," pages 23–24. Paragraphs 10, 11, and 13 of said circular read as follows:

Collectors are expected to exhaust the means afforded to them by law, within the time named therein, for the collection of taxes, subject to the requirement that the remedy by distraint or seizure, unless obviously unavailing, must be resorted to before suits, and that suits for taxes and prosecutions for pecuniary penalties are not to be instituted at their instance, nor by their deputies, unless there is good ground to believe that the money due the United States on judgment against the delinquent, together with costs, can be collected. It must also be remembered that the costs of prosecutions instituted by informers, other than collectors or their deputies, are not chargeable to the United States, in case of nonsuit or failure to recover judgment against defendant, or to collect the penalty.

Collectors will, of course, understand that they are not hereby prohibited from commencing prosecutions to enforce the *penalty of imprisonment* in cases where a wise discretion would determine that such course is necessary to vindicate the law. Nor are they prohibited from prosecuting or suing willful and defiant violators of the law, who are apparently able to pay the costs and penalties that may be recovered. [Italics for emphasis.]

* * * * * * *

Fines, penalties, and forfeitures, or the share thereof belonging to the Government, recovered or collected after suit brought, must be kept distinct from taxes collected, and be paid over to the proper depository, or Assistant Treasurer, as a part of the judiciary fund, in the same manner as other fines, penalties, and forfeitures; and the costs properly chargeable to the Government will be paid from the same fund.

Paragraphs 10 and 11 were, no doubt, based upon the provisions of section 31, Act of July 1, 1862, supra, which authorized the collectors to prosecute for fines, penalties, and forfeitures. They reveal the views of internal revenue on the scope of the collector's authority.

It covered the *commencing of prosecutions* to *enforce* the *penalty* of *imprisonment.*

The reaction of the Solicitor of the Treasury to this circular is of written record. He records no objection to paragraphs numbered 10 and 11, but is quite emphatic regarding paragraph 13. The letter of Solicitor Jordan, dated February 24, 1864, is quoted in full:

TREASURY DEPARTMENT,
SOLICITOR'S OFFICE, *February 24, 1864.*

Your attention is called to the following section, taken from a circular issued from the Office of Internal Revenue at Washington, under date of November 4, 1863, and addressed to the collectors appointed in connection with that Bureau in the several States:

"13. Fines, penalties, and forfeitures, or the share thereof belonging to the Government, recovered or collected, after suit brought, must be kept distinct from taxes collected, and be paid over to the proper depository or Assistant Treasurer as a part of the judiciary fund, in the same manner as other fines, penalties, and forfeitures, and the costs properly chargeable to the Government will be paid from the same fund."

The language here used, especially as it is addressed to collectors, is liable to an improper construction, since it might be supposed, on a casual reading, that the collectors themselves were expected to separate the moiety belonging to the Government in the cases referred to, and place the same in the hands of "the proper depository" or "Assistant Treasurer" as a part of the judiciary fund.

The rule to be adopted in all cases when legal proceedings have been instituted to recover fines, penalties, and forfeitures, under the provisions of the internal revenue law, is this: The clerk of the district or circuit court in which suit has been commenced, upon payment into his hands of moneys recovered after judgment had, or when a compromise is entered into, and the defendant pays the penalty claimed in the suit, and the proceedings are dismissed by direction of the United States district attorney, will deposit the Government moiety of such moneys received with the proper depository, and will send a receipt of such deposit to the Solicitor of the Treasury, to be directed by him into the judiciary fund.

In no instance will the clerk pay over such funds to the collector to be distributed by him as the section above referred to would seem to indicate.

EDWARD JORDAN,
Solicitor of the Treasury.

(Ibid., page 284.)

The significant sentence would appear to be: "The rule to be adopted in all cases *when legal proceedings have been instituted* to recover fines, penalties, and forfeitures, under the provisions of the internal revenue law *is this:* * * *." Evidently Solicitor Jordan appreciated and recognized the full authority intended to be granted the collectors of internal revenue by section 31, Act of July 1, 1862. *After* legal proceedings were commenced, then the Solicitor of the Treasury regarded himself as being in charge, with potent *compromise* authority under section 10, Act of March 3, 1863, supra.

ACT OF JUNE 30, 1864, AS AMENDED BY ACT OF JULY 13, 1866

Irrespective of the provisions of section 2, Act of March 3, 1863, quoted above, and without mentioning them, in the general revenue measure of June 30, 1864 (13 Stat., 223, 239, section 41), the collectors or their deputies are *again* enjoined and authorized "to *prosecute* for the recovery of any sum or sums which may be forfeited by virtue of this Act; and all fines, penalties, and forfeitures which may be incurred or imposed by virtue of this Act shall be sued for and recovered, in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam or*

otherwise, * * * before any court of competent jurisdiction." A qui tam proceeding was a suit by an informer. (See also section 179, 13 Stat., 305.)

The Act of June 30, 1864, went still further. Evidently a disagreement had developed between the internal revenue men and the Solicitor of the Treasury respecting the statutory authority of the latter. Section 173 of the Act of June 30, 1864 (13 Stat., 303, 304), contains this significant provision:

> And be it further enacted, That the following Acts of Congress *are hereby repealed*, to wit: * * * Also, the *second section* of the Act of March third, eighteen hundred and sixty-three, entitled "An Act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes," *so far as the same applies to officers of internal revenue.* [Italics for emphasis.]

The statute was not *amended* so as to exclude certain officers from its operation. The *entire section 2* was *repealed so far as* the same applies to *officers of internal revenue*. In the repealing language it is not declared that section 2 did apply to officers of internal revenue; but "so far as" it did, it was repealed.

At this point the situation may be thus described: The Solicitor of the Treasury held no statutory authority in his own right, supervisory or otherwise, over *officers of internal revenue;* nor did he have any statutory authority in his own right to make any investigations or take any administrative action which would interfere with or be in derogation of the statutory duties and powers of the officers of internal revenue. By section 4, Act of June 30, 1864, the number of *revenue agents* was increased to *five*, still operating under the direction of the Secretary, "to aid in the prevention, detection, and punishment of frauds upon the *internal* revenue, *and in the enforcement of the collection thereof.*" [1] The insertion of the word "internal" is full of meaning. They were not under the plain language of the statute supposed to be concerned with customs duties. They were not to operate under the Solicitor, but under the direction of the Secretary. (See 20 Op. Atty. Gen., 714.)

Equally persuasive of this practical viewpoint is section 5, Act of June 30, 1864, which authorized the Secretary to appoint inspectors in any assessment district where in his judgment it may be necessary "for the purposes of a proper enforcement of the *internal* revenue laws or the *detection* of *frauds*, and such inspectors *and revenue agents aforesaid* shall be subject to the rules and regulations of the said Secretary, and have all the powers conferred upon any other officers of *internal* revenue in making any examination of persons, books, and premises which may be necessary in the discharge of the duties of their office" (13 Stat., 224). (The *inspectors* were used more in connection with the duties respecting distilled spirits, snuff, and tobacco.) It is not likely that anyone who is under the direction and subject to the rules and regulations of the Secretary would be or was intended to be under the *statutory supervision*, general or specific, of the Solicitor of the Treasury. It is clear beyond reasonable doubt that as regards the *internal* revenue, the drive against fraudulent practices during the Civil War period was directed by the Secretary and not supervised by the Solicitor of the Treasury.

[1] The number was increased to 10 by the Act of March 3, 1865 (13 Stat., 471).

Perhaps this was a necessary compromise of a departmental conflict, but it presents the practical situation.

Section 16 of the Act of March 3, 1865 (13 Stat., 486), is in full harmony with this view when it provides:

> That all provisions of any former Act inconsistent with the provisions of this Act are hereby repealed: *Provided, however,* That no duty imposed by any previous Act, which has become due or of which return has been or ought to be made, shall be remitted or released by this Act, but the same shall be collected and paid, and all fines and penalties heretofore incurred shall be enforced and collected, and all offences heretofore committed shall be punished as if this Act had not been passed; *and the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, is authorized to make all necessary regulations and to prescribe all necessary forms and proceedings for the collection of such taxes and the enforcement of such fines and penalties for the execution of the provisions of this Act.* [Italics for emphasis.]

The foregoing italicized provisions were reenacted by section 70, Act of July 13, 1866 (14 Stat., 173). They authorize the Commissioner, under the direction of the Secretary, to make all necessary regulations and prescribe all necessary forms and proceedings for the collection of such taxes and the enforcement of such fines and penalties for the execution of the provisions of this Act. Aside from other provisions of a specific character, it would seem that the general statutory authority to "prescribe all necessary forms and *proceedings* for * * * the *enforcement* of such fines and penalties" was sufficient to place the positive control over the penal provisions affecting internal revenue in the hands of the Commissioner. The Act of July 13, 1866, section 64, also created the office of Solicitor of Internal Revenue, to serve as the statutory legal adviser of the Commissioner.

The Commissioner had further cause for satisfaction over the Act of June 30, 1864. The suggestion contained in his annual report dated November 30, 1863, quoted above, respecting compromise authority, was granted by Congress. Section 44, Act of June 30, 1864 (13 Stat., 240), gave the Commissioner authority (subject to regulations prescribed by the Secretary) to *compromise* all *suits* "relating to internal revenue." This authority was further clarified and greatly extended by the Act of July 13, 1866 (14 Stat., 146, section 8), which provided:

> The Commissioner of Internal Revenue shall be, and is hereby, authorized and empowered *to compromise,* under such regulations as the Secretary of the Treasury shall prescribe, *any case arising under the internal revenue laws, whether pending in court or otherwise.* [Italics for emphasis.]

The statutory provision quoted above eliminated the compromise authority of the Solicitor of the Treasury respecting suits involving *internal* revenue, as granted by section 10, Act of March 3, 1863. It is improbable that Congress would leave the Solicitor of the Treasury with authority to recommend compromise of an internal revenue claim, when the Commissioner, under the Secretary's regulations, could compromise *any* case arising under the internal revenue laws, whether pending in court or otherwise. If it should be considered that section 10 of the Act of March 3, 1863, was not effectively repealed by section 8, Act of July 13, 1866, nevertheless the provisions of the latter Act clearly and definitely conferred upon the Commissioner an authority superior to that possessed by the Solicitor, as regards compromises of internal revenue cases. Specific legislation supplants general legislation.

In his annual report dated November 30, 1863, Commissioner Lewis also recommended legislation that the share of all fines, penalties, and forfeitures belonging to the Government be paid into "this office." The Commissioner was probably then aware of the position of the Solicitor on that subject as later expressed in his communication of February 24, 1864, above quoted. In the Act of July 13, 1866 (14 Stat., 111), section 44 was amended so as to provide that "all judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties, shall be paid to the *collector* as internal taxes are required to be paid."

Section 41.—In the Act of June 30, 1864, and subsequent Acts of the Civil War period, section 41 contains the general authorization to collectors or their deputies to prosecute for the recovery of fines, penalties, and forfeitures. As amended by the Act of July 13, 1866 (14 Stat., 111), section 41 then read in full as follows:

> That it shall be the duty of the collectors aforesaid, or their deputies, in their respective districts, and they are hereby authorized, to collect all the taxes imposed by law, however the same may be designated, and to *prosecute* for the recovery of any sum or sums which may be forfeited by law; and all fines, penalties, and forfeitures which may be incurred or imposed by law, shall be sued for and recovered, in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam or otherwise*, before any circuit or district court of the United States for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction. And taxes may be sued for and recovered, in the name of the United States, in any proper form of action before any circuit or district court of the United States for the district within which the liability to such tax may have been or shall be incurred, or where the party from whom such tax is due may reside at the time of commencement of said action. *But no such suit shall be commenced unless the Commissioner of Internal Revenue shall authorize or sanction the proceedings: Provided,* That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector, deputy collector, assessor, assistant assessor, revenue agent, or inspector of internal revenue, the United States shall not be subject to any costs of suit, nor shall the fees of any attorney or counsel employed by any such officer be allowed in the settlement of his account, unless the employment of such attorney or counsel *shall be authorized by the Commissioner of Internal Revenue, either expressly or by general regulations.* [Italics for emphasis.]

Under the provisions of section 41, Act of June 30, 1864, as amended, supra, the collectors of internal revenue are authorized to prosecute in the United States courts for fines, penalties, and forfeitures. In similar manner, taxes may also be sued for and recovered in the name of the United States. The management of such suits is entrusted by law to the United States attorneys. However, after the amendment of the section by the Act of July 13, 1866, no suits for taxes or penalties were commenced unless the Commissioner of Internal Revenue authorized and sanctioned the proceedings. The amendment provided:

> But no *such suit* shall be commenced unless the Commissioner of Internal Revenue shall authorize or sanction the proceedings. [Italics for emphasis.]

The words "such suit" seem to refer to any kind of suit previously mentioned in the paragraph, whether a suit to recover "taxes" or a suit or a *prosecution* for fines, penalties, and forfeitures. Section 41 concludes with a proviso to the effect that in case of any suit for penalties or forfeitures brought upon information received from any person *other than* an internal revenue officer, the United States shall

not be subject to any costs of suit, nor shall the fees of any attorney employed by such officer be allowed unless the employment of such attorney "shall be authorized by the Commissioner of Internal Revenue, either expressly or by general regulations." In this way the Commissioner controlled the bringing of such suits whether initiated by revenue officials or by others, including informers.

The statutory wording under Stamp Duties is confirmatory of the contemporaneous construction made of the terms "fines, penalties, and forfeitures" as embracing criminal prosecutions. Section 155, Act of June 30, 1864, as amended by section 9, Act of July 13, 1866 (14 Stat., 141–142), provided that every person forging, counterfeiting, or misusing stamps or dies shall, on conviction thereof, forfeit the said counterfeit stamps and the articles upon which they are placed—

* * * and be punished by fine not exceeding one thousand dollars, or by imprisonment and confinement to hard labor not exceeding five years, or both, at the discretion of the court.

Section 156, Act of June 30, 1864 (13 Stat., 293), enacts the penalty for forging or counterfeiting *private* stamps, and provides that persons so doing—

* * * shall be deemed guilty of a felony, and, upon conviction thereof, shall be subject to *all* the *penalties, fines,* and *forfeitures* prescribed in the preceding section of this Act. [Italics for emphasis.]

One of the "penalties, fines, and forfeitures" prescribed by "the preceding section (section 155) of this Act," as above set forth, was imprisonment and confinement at hard labor, and such was to be part of the punishment for felons under section 156. Therefore, in the important portion of the Revenue Act, which imposed Stamp Duties, the words "penalties, fines, and forfeitures" were clearly descriptive of felonious guilt and imprisonment at hard labor. When the same words were used in section 41 of the same Act, as amended by section 9, Act of July 13, 1866, they had the same meaning. Imprisonment is not a forfeiture; but the word "penalty" is an appropriate legal description of the punishment of confinement at hard labor (section 3423, Revised Statutes).

In the Acts of June 30, 1864, and July 13, 1866, substantial progress was made in bringing the statutory control over all suits or proceedings arising under the internal revenue laws under the cognizance and control of officers appointed under the internal revenue laws. In his annual report dated November 30, 1866, Commissioner E. A. Rollins made many sensible observations and suggestions (Report on the Finances, volume 23, page 59). Among them were the following:

UNITED STATES DISTRICT ATTORNEYS

It is the duty of the attorneys of the several judicial districts of the United States to report to the Solicitor of the Treasury from time to time the commencement of any suit by them in which the United States is a party, whether for fine, penalty, or forfeiture, and to keep him advised of proceedings in the same and their final disposition. Most of the statutes relating to this subject were enacted when no internal revenue laws were in force. Under the revenue laws it is made the duty of the collectors of the several districts to prosecute for the recovery of any sum or sums which may be forfeited, and they are generally regarded in the statutes and in practice as the prosecuting officers of the revenue service. They make their reports to this office, but when the suit is placed in the hands of the law officers of the Government, their obligations are practically ended.

The Commissioner of Internal Revenue, under such regulations as the Secretary of the Treasury may prescribe, is authorized and empowered to compromise any case arising under the internal revenue laws, whether pending in court or otherwise. He is charged, too, by the law with the preparation of all instructions, regulations, and directions relating to the assessment and collection of the internal revenue taxes.

It is not my desire that more responsibility should be devolved upon this office, or more authority be given to it than what seems to be demanded by the best interests of the Department; *but when suits are commenced at the instance of the Commissioner through the collector*, and may be by him compromised, it would seem appropriate that the several district attorneys should be required to make to him the same reports which they are now required to make to the Solicitor of the Treasury, and that he be authorized to give instructions to such officers during the progress of the causes. [Italics for emphasis.]

The evident propriety of this has established its practice on the part of the Solicitor of the Treasury and the attorneys in the most important districts, at least so far as regards the conduct of these suits, but that this office should by law be entitled to have, and should have, in its possession as much information and authority relative to proceedings in the courts in its interest as it has in the assessment and collection of taxes, I do not suppose can be reasonably questioned. Uniformity and thoroughness can not possibly otherwise be secured.

Now that a solicitor is authorized and employed in this office, it is no more than appropriate that a docket should be kept in it of all the internal revenue suits in the country, and that it should have upon its files, at all times accessible for reference, copies of all important judicial orders and decisions in reference to internal revenue laws or their administration.

I believe it advisable, also, that the Commissioner should be charged with the custody of all real estate purchased for the United States at sales upon distraint, or process from court, in suits under the internal revenue laws; for he alone has official information of all such purchases, at least in cases of distraint, and should be charged, too, with the sale of the same under the approval in every instance of the Secretary of the Treasury. I do not regard this as essential by any means, but it naturally follows from the change proposed with reference to the conduct of suits, and a knowledge of all the circumstances attending the purchase and of the results of the investigation of titles at that time must often prove of advantage in the sale.

The Congress promptly enacted legislation adopting the above-quoted suggestions, in an Act entitled "An Act to amend existing laws relating to internal revenue, and for other purposes," approved March 2, 1867 (14 Stat., 471). In brief retrospect, we have seen that the authority granted the Solicitor of the Treasury by section 2, supra, Act of March 3, 1863, had already been repealed by section 173, supra, Act of June 30, 1864, in so far as it affected the officers of internal revenue. By section 31, Act of July 1, 1862, and section 41, Act of June 30, 1864, as amended, the collectors held the power to prosecute for violations of internal revenue laws. In practical administration, this authority covered both civil and criminal violations. By section 44, Act of June 30, 1864, as amended, the authority to compromise any internal revenue case was left with the Commissioner, subject to regulations of the Secretary. Such authority as remained to the Solicitor of the Treasury over internal revenue matters was indirect, through his statutory powers to issue directions to district attorneys, marshals, and clerks of courts, and call for reports from them. That authority was whittled down to little or nothing by the Act of March 2, 1867, above mentioned, which seems to take away, as of that time, any remaining vestige of actual control in the Solicitor of the Treasury over internal revenue matters. Section 3 provides:

That in *all suits or proceedings arising under the internal revenue laws*, to which the United States is party, and in all suits or proceedings against a collector or other officer of the internal revenue, wherein a district attorney shall

appear for the purpose of prosecuting or defending, it shall be the duty of said attorney, instead of reporting to the Solicitor of the Treasury, immediately at the end of every term of the court in which said suit or proceeding is or shall be instituted, to forward to the Commissioner of Internal Revenue a full and particular statement of the condition of all such suits or proceedings appearing upon the docket of said court: *Provided,* That upon the institution of any such suit or proceeding it shall be the duty of said attorney to report to said Commissioner the full particulars relating to such suit or proceeding; and it shall be the duty of the Commissioner of Internal Revenue (with the approval of the Secretary of the Treasury) to establish such rules and regulations, not inconsistent with law, for the observance of revenue officers, district attorneys and marshals, respecting suits arising under the internal revenue laws, in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws. [Italics for emphasis.]

The regulations above contemplated for the observance of district attorneys, marshals, and internal revenue officers were approved by the Secretary and promulgated on April 13, 1867. The second paragraph of these regulations states:

By section third of said Act, it is made the duty of the Commissioner of Internal Revenue to control, and to keep record of, *all suits* arising under the internal revenue laws, and consequently the above-mentioned officers will hereafter look to the Commissioner for instructions in such cases, and make all reports to him in a similar manner to that hitherto required by the solicitor of the Treasury. Reports will be made to this office in all cases now pending, and all instructions concerning such cases will be issued by the Commissioner of Internal Revenue. [Italics for emphasis.]

These regulations were not to be deemed to apply to any cases *except those arising under the internal revenue laws.* The Solicitor of the Treasury retained his authority over customs cases. There was a Solicitor of Internal Revenue, then drawing more pay than the Solicitor of the Treasury, and who was well able to handle the legal work of the Office of Internal Revenue. The Solicitor of the Treasury was quick to note, however, that section 3, Act of March 2, 1867, above recited, did not mention clerks of courts. He thereupon prepared a circular, dated April 20, 1867, announcing that the regulations and instructions theretofore issued from his office to said clerks of courts would remain in force, and that they will continue to make the usual reports and returns, "making, however, *separate* reports in all matters relating to internal revenue suits." It may have been a small matter, but the position of the Solicitor of the Treasury was in conformity with the literal language of the statute.

Section 7 of the Act of March 2, 1867 (14 Stat., 473), provided that the Commissioner, with the approval of the Secretary, was authorized to pay such sums as may in his judgment be deemed necessary "for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same time in cases where such expenses are not otherwise provided for by law." This provision formed the basis of Revised Statutes 3463. It is now section 3792, Internal Revenue Code.

To remedy the odd situation respecting the clerks of courts, above discussed, the Act of March 1, 1879 (section 2, 20 Stat., 327), amended section 797, Revised Statutes (1878 edition), by *adding thereto* the following:

He (every clerk of court) shall *also,* at the close of each quarter or within ten days thereafter, report to the Commissioner of Internal Revenue all moneys

paid into court on account of cases arising under the internal-revenue laws, as well as all moneys paid on suits on bonds of collectors of internal revenue * * *. [Italics for emphasis.]

This amendment did not exclude the Solicitor of the Treasury from the receipt of any report he was entitled to from clerks of courts under Revised Statutes, section 797, but it gave the Commissioner the information he needed.

Concerning the district attorneys, the aforementioned regulations of April 13, 1867, provided (page 4):

Whenever a district attorney shall, in any manner, become possessed of information which shall lead him to believe that a trespass upon the property of the United States (of which possession is held by virtue of the internal revenue laws), or an infraction of the internal revenue laws, has been committed, he will immediately report such information to the collector of internal revenue for the district in which the offence was committed, and if the collector shall agree as to its propriety, suit shall be immediately commenced. If the collector shall not so agree the district attorney will immediately report the circumstances of the case to the Commissioner of Internal Revenue and await his instructions.

On the receipt of papers on which to commence suit the district attorney will closely examine and see if there is any defect in them, or if any explanation is wanted; and if so, he will immediately report the same to the person from whom the papers were received, with such suggestions as shall seem to him proper. If, before the commencement or during the progress of a cause, questions shall arise in the mind of the district attorney in relation to which it may, in his opinion, be desirable that he should take counsel, he will state such questions to the Commissioner of Internal Revenue, with the authorities bearing upon them, and also his own views.

The commencement of all suits must be reported by district attorneys, on Form 112, to the Commissioner immediately after process shall be issued, and at the end of every term of the district and circuit courts they will make a general report on Form 113, containing a list of all internal revenue suits commenced by them since the close of the last preceding term of such court, with a full statement of the causes of action and all the proceedings therein; and also of all proceedings since the close of the last preceding term in causes previously commenced, so as to furnish to the Commissioner a full history of what has been done in all causes since the previous term, including any trial, verdict, decision, or judgment, and the issuing of any execution, with the time when issued.

It will be remembered that in section 41, previously quoted, the statute does not expressly say whether a suit shall be initiated in the field by the collector of internal revenue or his deputy. However, it is plainly stated that the collector did commence such proceedings in Decision No. 99, issued by the Office of Internal Revenue in April, 1863. In fact, said Decision No. 99 provides that when consultation can not be had with the district attorney without great inconvenience, the collector is authorized to employ counsel to initiate such proceedings as may be necessary. The authority of the collectors to initiate and commence proceedings is even more emphatically stated in Circular No. 12, supra, issued by Commissioner Lewis on November 4, 1863. This practice is restated and confirmed by the regulations dated April 13, 1867, promulgated by the Commissioner, with the approval of the Secretary, under the authority of section 3, Act of March 2, 1867, above quoted, for the observance of revenue officers, district attorneys, and marshals. Concerning the collectors of internal revenue, said regulations provided (page 7):

When a collector of internal revenue directs the commencement of a suit for any cause, he will do so in writing, addressed to the proper district attorney. If it is for a fine, penalty, or forfeiture he will communicate all the facts which he expects to be able to prove, and the names and residences of

the witnesses by whom such facts can be shown, and the name of the informer, if any. He will distinctly state what law he believes has been violated, and the amount of the penalty claimed.

In his annual report dated November 20, 1869, Commissioner Delano explains that as early as possible after taking office he caused a reorganization of the clerical labor into three principal divisions, in charge of the Solicitor of Internal Revenue, and the second and third deputy commissioners. It is interesting to note that to the *law division*, under the Solicitor, were assigned "the subjects of *frauds against the revenue*, refunding and abatement of taxes, of legacies, successions, incomes, salaries, dividends, special taxes, and questions relating to the tax on tobacco." To convey some idea of the magnitude and importance of the labors of the "Bureau," the Commissioner gives a summary from the statistical reports. Among many others, the summary shows the following items for the fiscal year 1869:

Number of suits brought in Federal courts	4,578
Of these, the number of proceedings *in rem*	844
Number of indictments found	2,552
Number of other proceedings *in personam*	1,182
Number of judgments in proceedings for forfeiture	719
Number of convictions on indictments	1,020
Number of acquittals	207

(Report on the Finances, volume 26, pages 18–19.) It is noted by way of comparison that the customary statistical report of the Solicitor of the Treasury concerning suits under his charge lists suits on Treasury transcripts; fines, penalties, and forfeitures under the *customs* revenue laws, etc.; suits on custom-house bonds; suits against collectors of customs and agents or officers of the United States; and miscellaneous suits. He makes no mention of suits in internal revenue cases. (Ibid., page 332.) For the preceding fiscal year 1867, his report included the customary table of "suits for fines, penalties, and forfeitures under the *internal* revenue laws." (Report on the Finances, volume 24, page 157). It is tangible evidence that the Commissioner was now in practical control of all suits, civil and criminal, affecting the *internal* revenue.

The Act of July 18, 1866 (14 Stat., 178, 179, section 7), illustrates the curious division that obtains between customs and internal revenue. It is entitled "An Act further to prevent smuggling and for other purposes." The statute deals with problems connected with collecting customs duties. It authorizes the boarding and searching of vessels. Officers of the customs may stop and search any vehicle, beast, or person on which they suspect there are any dutiable goods which have been introduced into the United States contrary to law. A number of penalties, including imprisonment, are prescribed. Section 7 then makes it the duty of the "several collectors of *customs*" to report within 10 days to the district attorney all cases in which any fine or personal penalty was incurred for the violation of any law of the United States "relating to the *revenue*," but has not been "voluntarily *paid*," giving the facts with names of the witnesses, on which a reliance may be had "for a condemnation or conviction." Such district attorney "shall cause suit *and* prosecution to be commenced and prosecuted without delay for the fines and personal penalties," unless he shall decide that a *conviction* can not probably

be obtained, in which event he shall report the facts to the Secretary for his direction.

The word "revenue" could have been construed to include internal revenue, in which case the collectors of the customs would have found themselves deeply involved with the collectors of internal revenue. No record has been found, however, that this statute was ever construed to be applicable to *internal* "revenue." By analogy, Circular No. 57, Office of Internal Revenue, dated February 5, 1867, concerning seizures of property in the custody of transportation companies, enjoins the collectors of internal revenue and their deputy collectors that a statement should be given the company in which, among other things, it is specified that the property is seized for violation of the *internal* revenue laws.

The Act of March 3, 1873 (17 Stat., 580), was entitled "An Act to amend an Act entitled 'An Act to prevent smuggling, and for other purposes,' approved July eighteenth, eighteen hundred and sixty-six." The Act of July 18, 1866, is the same Act discussed above. Section 7 was amended to read:

> That it shall be the duty of the several collectors of customs *and of internal revenue* to report within ten days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for the violation of any law of the United States relating to the revenue, a statement of all the facts and circumstances of the case within their knowledge, together with the names of the witnesses, and which may come to their knowledge from time to time, stating the provisions of the law believed to be violated, and on which a reliance may be had for *condemnation* or *conviction*, and such district attorney shall cause the proper proceedings to be commenced *and prosecuted* without delay for the fines, penalties, and forfeitures by law in such case provided, unless, upon inquiry and examination he shall decide that such proceedings cannot probably be sustained, or that the ends of public justice do not require that proceedings should be instituted, in which case he shall report the facts in customs cases to the Secretary of the Treasury, and in internal revenue cases to the Commissioner of Internal Revenue, *for their direction* * * *. [Italics for emphasis.]

This amendatory Act is in keeping with the pattern of internal revenue administration designed over the Civil War period. The phrase "relating to the revenue" remains the same, but collectors of internal revenue are now specifically brought under its terms. It deals with all violations of the law, criminal and otherwise. Smuggling is a crime. It is a fraud upon the revenue. It is subject to a conviction. So were a number of the internal revenue offenses. In such cases involving customs, the district attorney, should he decide not to go along with the collector of customs, reported the facts to the Secretary; in such cases involving internal revenue, the district attorney, should he decide not to go along with the collector of internal revenue, reported the facts to the Commissioner—"*for their direction.*" The foregoing legislation served as the basis for compiling sections 3164 and 838, Revised Statutes, now section 3745(a), Internal Revenue Code. Although section 838, Revised Statutes, which is also section 486, Judicial Code, concludes with the words "for their direction," no mention is made thereof in section 3745(b), Internal Revenue Code.

AUTHORITY TO REFER FRAUDS ON THE INTERNAL REVENUE TO THE DEPARTMENT OF JUSTICE FOR CRIMINAL PROSECUTION

Section 3740, Internal Revenue Code, is entitled "Authorization to Commence Suit," and provides:

No *suit* for the *recovery* of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner authorizes or sanctions the proceedings and the Attorney General directs that the suit be commenced. [Italics for emphasis.]

This section was based on Revised Statutes, section 3214, as affected by Executive Order No. 6166, section 5, dated June 10, 1933; and Revised Statutes, section 3214, was, in turn, compiled from certain provisions in section 41, Act of June 30, 1864, above quoted, as amended by section 9, Act of July 13, 1866. The wording of section 3740, in respect of a *suit* for the *recovery* of any fine, *penalty*, or forfeiture, bears close resemblance to the language of sections 4 and 5, Act of May 29, 1830 (4 Stat., 415), previously quoted (page 29).

The uniform practice has always been, and still is, for the Commissioner to refer most criminal cases to the Department of Justice.

THE REGULATIONS AND ADMINISTRATIVE PRACTICE

The departmental regulations concerning the prosecution of internal revenue frauds are of interest. For example, consider the "Regulations Respecting Cases Arising Under the Internal Revenue Laws, and Other Matters," being Regulations No. 12, Revised, promulgated April 15, 1890, approved by Secretary William Windom, pages 8, 9, 10, 30, 31. The collectors are operating under section 3164, Revised Statutes. Section 3214, Revised Statutes, is cited as the basis of both civil and criminal proceedings. The prosecuting officer should, "when suit or prosecution is requested by officers of internal revenue, demand and insist upon such proofs being brought to his personal knowledge, and, so far as may be, put into his possession, as will justify the bringing of the suit, and a reasonable expectation of a successful issue." (Ibid., page 9.) Under reports from United States attorneys it is prescribed: "In the case of *indictments*, the crime or offense should be specified and the statute or section violated." (Ibid., page 10.) Under reports to district attorneys by collectors, the situation is so clearly stated as to warrant quotation (pages 30–31):

Every collector of internal revenue is required to report within 10 days to the district attorney of the district in which any fine, penalty, or forfeiture may be incurred for any violation of the internal-revenue law a statement of all the facts and circumstances of the case within his knowledge, and which may come to his knowledge from time to time, together with the names of the witnesses, stating the provisions of the law believed to be violated, and on which a reliance may be had for condemnation or conviction. (Section 3164, Revised Statutes.)

These reports should give such a recital of facts as will enable the district attorneys *to frame indictments or libels, as the case may be.*

If real estate connected with a distillery is to be libeled, the district attorney can not generalize, but, in asking for condemnation, he must describe the real estate with such certainty that, on judgment of forfeiture, the ground can be laid off upon the face of the earth by metes and bounds.

Nor is it sufficient for his purposes, in proceeding by *indictment*, to be simply told that a certain section of law has been violated. The facts must be stated, especially as it often occurs that several and different offenses are embraced in the same section.

This report is to be made whether the collector thinks the case is one which should be prosecuted or not. *The responsibility of determining whether or not a prosecution should follow is devolved upon the district attorney and Commissioner of Internal Revenue.*

In making such report, however, the collector should send therewith a statement of the circumstances which, in his opinion, renders it either expedient or inexpedient to commence proceedings, with his recommendation.

He should exercise good judgment and discrimination in making his recommendations, being governed by his knowledge that *the Internal Revenue Office is opposed to criminal prosecutions for slight and unintentional violations of law.* In cases, for instance, of failure to pay special taxes at the proper time, where the parties subsequently voluntarily come forward, make return and pay tax and penalty, or where, from the circumstances, it is evident that there has been no purpose of evading the tax, it is not only right, but it is incumbent upon the collector, to make such a detailed statement of the facts and circumstances as will leave in the mind of the United States attorney no uncertainty as to what course is required in the public interest.

He should avoid falling into a perfunctory habit in making the reports, and when he is satisfied that a criminal prosecution would be unjust and wrong, he should take pains to make a clear showing of the reasons for his recommendation.

* * * * * * *

CASES TO BE CAREFULLY EXAMINED BEFORE PROCEEDINGS ARE INSTITUTED

Collectors before reporting a case to the district attorney for prosecution should examine into the same with the utmost care, with a view of giving the district attorney definite information in regard to the same.

Where persons have knowingly and willfully violated the law, with the evident intention of defrauding the Government of its revenue, vigorous measures should be taken to bring the parties to trial and punishment; but no encouragement should be given to the commencement of prosecutions for merely slight and unintentional offenses, involving no loss to the Government, and where no question of fraud is involved; and all complaints presented by professional informers should receive careful scrutiny before the commencement of prosecutions thereupon.

Substantially the same material is in the Regulations No. 12, dated November 12, 1880, at pages 25–26; Regulations No. 12, revised April 18, 1904, pages 24–25; and in Regulations No. 12, revised October 1, 1920, articles 7, 35, 36, 37. In four separate editions of Regulations No. 12, extending from 1880 to 1920, and approved by four different Secretaries of the Treasury, the responsibility of determining prosecution in an internal revenue case was recognized as a function of the Commissioner of Internal Revenue. That is long-continued executive construction of section 3214, Revised Statutes, by the highest official of the Department. (59 Corpus Juris, page 1025 seq.; 58 Ops. Atty. Gen., 381, 383.)

Article 7 of the 1920 revision is entitled "Institution of *criminal* proceedings" and represents a blanket extension of authority by the Commissioner to United States attorneys to "institute criminal *and* forfeiture proceedings in accordance with section 838, Revised Statutes, without obtaining specific instructions from the Commissioner *in each case.*" In article 19, it is brought out that the authority for compromising a *judgment* taken in an internal revenue case is under section 3469, Revised Statutes, which would have brought the Solicitor of the Treasury into the picture. However, as to fines, penalties, and forfeitures, the Attorney General ruled on several occasions that no authority to compromise such a judgment was granted.

The Solicitor of Internal Revenue, of course, handled the legal aspects of prosecution work. (See Commissioner's Annual Report, 1920, page 41.) When that office was abolished in 1926, there was no change in the Commissioner's position with the General Counsel for the Bureau of Internal Revenue. In the Commissioner's Annual Report for 1926, under Penal Division of the former General Counsel's office, appears the following (page 42):

During the fiscal year ended June 30, 1926, several important changes were made in the duties and functions of the Penal Division. The first of these, which has been in effect since early in September, 1925, altered the previous practice of determining accounting questions as well as questions of law and the assertion of penalties, and eliminated the determination of accounting questions by this division. Another change was the inauguration of a practice of preparing in the Penal Division *indictments in all cases referred by the Commissioner to United States attorneys for criminal prosecution.* This practice was adopted, with the approval of the Department of Justice, in order to assist the United States attorneys to whom such cases are referred, and for the purpose of obtaining greater uniformity in indictments in tax cases.

During the entire period of time from 1867 to date, the Commissioner of Internal Revenue has been regarded as the administrative officer having statutory power to authorize, or sanction, or refer a case for criminal prosecution.

Section 376, Revised Statutes, now section 326, Title 5, of the United States Code, read as follows:

> The Solicitor of the Treasury, under direction of the Secretary of the Treasury, shall *take cognizance* of *all frauds* or attempted frauds upon the *revenue*, and shall exercise a *general supervision* over the *measures* for their *prevention* and *detection*, and for the *prosecution* of persons charged with the commission thereof. [Italics for emphasis.]

In the United States Code (1940 Edition) the words "Solicitor of the Treasury" have been changed to read "General Counsel for the Department of the Treasury." Section 326 of the Code, which is old section 376, Revised Statutes, as above mentioned, is set out in Chapter 5 of title 5. Title 5 relates to the Executive Departments. Chapter 5 deals exclusively with the Department of Justice. Section 326 is not placed under the Treasury Department; it is Chapter 4 which deals with the Department of Treasury.

The reason for the continued inclusion of section 326, United States Code, under the Department of Justice is apparently historical. When the first United States Code was issued in 1926, the Solicitor of the Treasury was an official in the Department of Justice. By the Executive Order of June 10, 1933, all prosecuting functions then exercised "by any agency or officer" were transferred to the Department of Justice. The general supervision over measures for the *prevention* and *detection* of frauds upon the revenue, as prescribed in section 326, would take place prior to and including reference of the case to Justice; but on June 10, 1933, any prosecuting function contained in section 326 was placed in the Department of Justice, although an officer answering the name of Solicitor of the Treasury no longer existed in that Department. In all editions of the United States Code, section 326 has retained its position under the Department of Justice (Chapter 5, Title 5).

The Solicitor of the Treasury had, prior to the Act of June 22, 1870, establishing the Department of Justice, been an officer of the Treasury Department. He was granted certain powers by the Act of May 29, 1830, which had created the office, and by the Act of March 3, 1863. Those statutory powers had been the subject of repeal or modification by subsequent statutes, especially internal revenue Acts. As regards internal revenue, the process had taken place to such an extent that as of June 22, 1870, the Commissioner had his own legal adviser in the person of a Solicitor of Internal Revenue, and held the statutory right to supervise the prosecuting officers called collectors and deputy collectors of internal revenue; the statutory right

to compromise all internal revenue cases and to remit and refund taxes; and the statutory authority to issue instructions to district attorneys and marshals in all internal revenue suits.

In that state of affairs, both the Solicitor of the Treasury and the Solicitor of Internal Revenue were transferred from the department with which they were associated to the Department of Justice. As late as 1893 Attorney General Olney said he had not found any general instructions in writing from the Attorney General to the Solicitor of the Treasury in relation to the performance of the latter's duties subsequent to the taking effect of the Act of June 22, 1870. (Ops. Atty. Gen., volume 20, page 656.) This was perhaps due to the fact that at that time both the Attorney General and the Solicitor of the Treasury occupied adjoining rooms in the Treasury Department, so that communication between them was oral.

The Act of June 22, 1874, entitled "An Act to revise and consolidate the statutes of the United States, in force on the first day of December, anno Domini one thousand eight hundred and seventy-three," is cited as the Revised Statutes of the United States. Section 349, Revised Statutes, provides that "there shall be in the Department of Justice a Solicitor of the Treasury, an Assistant Solicitor of the Treasury, a Solicitor of Internal Revenue, etc." Section 350, Revised Statutes, provides:

> The officers named in the preceding section shall exercise *their functions* under the supervision and control of the head of the Department of Justice. [Italics for emphasis.]

The question is whether, upon their transfer to Justice, "*their functions*," whatever they were, went with them and were also transferred to Justice. The fact that their *statutory* functions (e. g., section 376) were actually listed under the Department of Justice is indicative but not conclusive. (See section 5600, Revised Statutes.) Section 376, Revised Statutes, relating to frauds upon the revenue, although coded under the Department of Justice, provides that the Solicitor of the Treasury shall operate in that particular "under direction of the Secretary of the Treasury." This seemed to conflict with section 350, Revised Statutes, above quoted, which says that in the exercise of "their functions," said official shall be under the supervision and control of the Attorney General. The apparent conflict was the subject of a very practical and sensible decision by the Attorney General. (20 Ops. Atty. Gen., 714.) As usual, the decision was rendered in a *customs* case. It reads in full as follows (including the head note):

> ATTORNEY-GENERAL—TREASURY DEPARTMENT
>
> The Solicitor of the Treasury is an officer of the Department of Justice and not of the Treasury Department.
>
> Actions to recover moneys due the United States, not involving any issue of fraud, do not come in any way under the direction of the Secretary of the Treasury. (Rev. Stat., 376.)
>
> The question whether such an action is maintainable is a question arising in the Department of Justice, and therefore the Attorney General's opinion can not be asked upon it by the Treasury Department.
>
> The "collection of the revenue" under the superintendence of the Secretary of the Treasury within the meaning of Revised Statutes 249 relates to the proceedings of the collectors and their subordinates, and not to those of district attorneys.

DEPARTMENT OF JUSTICE,
February 10, 1894.

SIR: On January 29 you asked my opinion upon the advisability of attaching certain goods of an alleged debtor to the United States while in transit through the State of Maine in bond en route from England to Canada. That opinion I declined to give, because the advisability of bringing a suit is not a question of law and because also it is inexpedient for the Attorney-General to render an official opinion as to how the suit, if actually brought, ought to be decided by the courts. You now refer the matter to me again, asking my opinion whether these goods can be attached by the laws of the State of Maine and whether such attachment would be in contravention of treaty or statute. The second of the grounds stated for declining an opinion upon the former question applies to these questions as well.

And for another reason I am debarred from rendering an official opinion. Although brought to recover the duties on goods previously smuggled by the defendant, yet the proposed action would be simply an action of *assumpsit* for moneys due. No issue of fraud would be involved. It would, therefore, not come under the direction of the Secretary of the Treasury by section 376 of the Revised Statutes. It would be a suit "in which the United States is a party, or interested," within the meaning of section 379 of the Revised Statutes. As to such suits, "the Solicitor of the Treasury shall have power to instruct the district attorneys," etc., by the terms of that section. The Solicitor of the Treasury is an officer of this Department, as is also the district attorney for the district of Maine. The questions of law stated in your communication, therefore, arise in the Department of Justice, and not in the Treasury Department, and are not questions upon which I am authorized to give an opinion to the Treasury Department by section 356 of the Revised Statutes. It is true that by section 249 it is in your province to "direct the superintendence of the collection of the duties on imports." I do not think, however, that this section is intended to substitute the Secretary of the Treasury for the Attorney-General as the officer controlling the actions of the Solicitor of the Treasury in such suits. I have held in the Bloch and Cutajar cases that by the peculiar provisions of section 376 prosecutions for frauds or attempted frauds upon the revenue are to be directed by the Secretary of the Treasury instead of by the Attorney-General. This, however, is an anomaly, and the word "collection" in section 249 applies, in my opinion, to the proceedings of collectors and their subordinates, and not to those of district attorneys.

For these reasons the papers are again returned without opinion upon the questions submitted.

Very respectfully,

RICHARD OLNEY.

THE SECRETARY OF THE TREASURY.

NOTE.—The following is the letter referred to in the foregoing opinion:

OCTOBER 21, 1893.

SIR: Your letter of October 13, 1893, in relation to frauds upon the revenue at the port of New York by one Cutajar and the failure of the United States attorney to act upon information furnished by the collector, seems to raise the same question of departmental authority which has been discussed between us in the case of United States against Bloch. On reviewing the statutes I am still unable to perceive that I have any proper authority in this matter of punishing frauds upon the revenue.

The Act of August 2, 1861 (12 Stat., 285), charged the Attorney-General "with the general superintendence and direction of the attorneys and marshals of all the districts in the United States and Territories as to the manner of discharging their respective duties." An explanatory Act was passed on August 6, 1861 (12 Stat., 327), providing that the above enactment should not be "construed to repeal, modify, or in any way affect any law now in force confining or regulating the duties of the Solicitor of the Treasury."

By the Act of March 3, 1863 (12 Stat., 739), "the Solicitor of the Treasury, under direction of the Secretary of the Treasury," was directed to "take cognizance of all frauds or attempted frauds upon the revenue," and charged with "a general supervision over the measures for their prevention and detection, and for the prosecution of persons charged with the commission thereof." For the purpose of enabling him to perform these duties he was authorized to employ not more than three additional clerks. The statute seems impliedly to have abrogated the statute of 1861, in so far as direction of dis-

trict attorneys with relation to these prosecutions was concerned. This Act was entitled "An Act to prevent and punish frauds upon the revenue," etc.

The Act establishing the Department of Justice (Act of June 22, 1870, 16 Stat., 162) transferred the Solicitor of the Treasury from the Treasury Department to the Department of Justice, and directed that he should exercise his functions "under the supervision and control of the head of the Department of Justice." This Act might be construed to abrogate the Act of 1863 so far as it placed the Solicitor under direction of the Secretary of the Treasury in the matter of frauds upon the revenue.

The Revised Statutes, however, reenact all of the statutory provisions above referred to, which appear as sections 349, 350, 362, and 376. The reenactment of the provision of the statute of 1863, that the Solicitor of the Treasury, as to certain of his duties, is to act under the direction of the Secretary of the Treasury, seems to me to constitute an exception to the provision of section 350, directing that he shall be under the supervision and control of the Attorney-General.

There does not seem to have been any uniformity of ruling upon this point, and I have been reluctant to rule definitely upon it. Practical considerations, however, seem to me to confirm the opinion above expressed. The Solicitor of the Treasury is familiar with the details of all these matters, and has a special clerical force assigned to him for that purpose. The civil and criminal proceedings arise out of the same transactions, and should be under the supervision of the same officer. I think, therefore, that in this Cutajar case, as well as the Bloch case and all others of a similar nature, I should refrain from interfering by directions to district attorneys.

* * * * * * *

Very respectfully,

RICHARD OLNEY.

THE SECRETARY OF THE TREASURY.

Analyzing the above opinion, it is noted that a question arising under section 379, Revised Statutes (respecting the power of the Solicitor to instruct district attorneys) and concerning the exercise of one of the Solicitor's own prerogatives or functions, was a question of law *arising in the Department of Justice, and not in the Treasury Department.* The Solicitor was not subject to the direction of the Secretary of the Treasury as regards the exercise of his functions under section 379. Therefore, the opinion ruled squarely that the *functions* as well as the *office* of Solicitor of the Treasury were then in the Department of Justice.

However, by the "*peculiar provisions*" of section 376, Revised Statutes, prosecutions for frauds upon the revenue are to be *directed* by the Secretary of the Treasury instead of by the Attorney General. It was not any function belonging to the *Solicitor* of the Treasury that presented difficulties to the Attorney General. It was the statutory words "under direction of the Secretary of the Treasury" that raised the legal obstacle. Those words, said the Attorney General, authorized the Secretary of the Treasury to direct the Solicitor of the Treasury in the matter of prosecutions for frauds upon the revenue. "This, however, is an *anomaly.*" It constitutes an exception to the provision of section 350, Revised Statutes, prescribing that the Solicitor shall be under the supervision and control of the Attorney General.

This was not a ruling that the Solicitor of the Treasury in his own right held the statutory function of prosecuting for all frauds upon the revenue. It was a ruling that under "the peculiar provisions" of section 376, Revised Statutes, and anomalous though it may be, the exercise of a function subject to the direction of the Secretary of the Treasury, presented a question arising in the administration of the Treasury Department, within the meaning of section 356, Re-

vised Statutes. Practical considerations confirmed the legal view. The Solicitor of the Treasury was familiar with the details of customs frauds and had a clerical force for that purpose. The Solicitor also had jurisdiction of the civil aspect of the fraud, since it was a customs violation. "The civil and criminal proceedings," said the Attorney General, "arise out of the same transactions, and should be under the supervision of the same officer." Therefore, the Attorney General declined to issue any directions to the district attorney although the latter officer was refusing to act upon information of the collector of customs.

The same reasoning is applicable to internal revenue situations. Section 3740 of the Internal Revenue Code grants the Commissioner the exclusive function of authorizing or sanctioning a *suit* for the recovery of any fine, penalty, or forfeiture. The Commissioner is clearly in control of the civil aspects of the fraud. Since the civil and criminal proceedings arise out of the same fraud, they should, in harmony with the Attorney General's reasoning, be under the supervision of the same officer. In internal revenue affairs that officer is the Commissioner. Such is the proper construction of section 3740. (See also section 3745 respecting the collectors.)

Thus far we have discussed a certain office called "Solicitor of the Treasury" which was created by the Act of May 29, 1830 (4 Stat., 414), and was transferred to the Department of Justice by the Act of June 22, 1870 (section 3, 16 Stat., 162), where it remained until 1933. In 1933, an important thing happened.

Section 5, Executive order of June 10, 1933 (No. 6166), provides:

> SECTION 5. *Claims by or against the United States.*
>
> The functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the Government of the United States, and of defending claims and demands against the Government, and of supervising the work of United States attorneys, marshals, and clerks in connection therewith, now exercised by any agency or officer, are transferred to the Department of Justice.
>
> As to any case referred to the Department of Justice for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.
>
> For the exercise of such of his functions as are not transferred to the Department of Justice by the foregoing two paragraphs, the Solicitor of the Treasury is transferred from the Department of Justice to the Treasury Department.
>
> Nothing in this section shall be construed to affect *the function of any agency or officer with respect to cases at any stage prior to reference to the Department of Justice for prosecution or defense.* [Italics for emphasis.]

The Secretary of the Treasury requested of the Attorney General an opinion whether the then incumbent of the Office of Solicitor of the Treasury was subject to the automatic separation provision of the Executive order, which provided that "all personnel employed in connection with the work of an abolished agency or function disposed of shall be separated from the service of the United States * * *." The question presented was whether the then incumbent of the office of Solicitor of the Treasury was "employed in connection with the work of an abolished agency or function disposed of." The Attorney General ruled that the office of Solicitor was an agency transferred from one Department and therefore abolished, and became a "successor agency" in the Department to which it was transferred. The opinion concludes (37 Ops. Atty. Gen., 222, 225):

It follows, therefore, that the provisions of the Executive order quoted herein *abolished* the office of the Solicitor of the Treasury of *this* Department [Justice] and *created* in the Treasury Department *an office* of Solicitor of the Treasury, to which is transferred *the legal work of the Treasury Department now performed* by *this* Department.

The Solicitor of the Treasury mentioned in section 376, Revised Statutes, was the unique office created by the Act of May 29, 1830. According to the Attorney General, that office was "abolished" by the Executive order of June 10, 1933. The "successor agency," or the second office of Solicitor of the Treasury, was created by said Executive order, and there was transferred to it only "the legal work of the Treasury Department *now* performed by this (Justice) Department." On and prior to June 10, 1933, the date of the Executive order, the detection, determination, and decision to prosecute criminally, in respect of all frauds upon the *internal* revenue, were performed by the Commissioner of Internal Revenue. They were all accomplished in and by the Bureau with the legal assistance of the General Counsel for the Bureau of Internal Revenue, who, like the Commissioner, was an official of the Treasury Department. Prior to the Revenue Act of February 26, 1926, section 1201(a) of which created the office of General Counsel for the Bureau of Internal Revenue, such duties were accomplished in and by the Bureau with the legal assistance of the Solicitor of Internal Revenue. None of the work in respect of internal revenue frauds, up to and including the function of referring a case to the Department of Justice for criminal prosecution, was performed by the Solicitor of the Treasury or under the authority of section 376, Revised Statutes. It was all done by the Commissioner with the assistance of his own statutory legal adviser, and under the specific authority of section 3214, Revised Statutes (now section 3740, Internal Revenue Code). The detection and determination of frauds upon the internal revenue, including the authority to recommend or refer a case to the Department of Justice for criminal prosecution, could not, therefore, have been the subject of a transfer from Justice to Treasury, accompanying the newly created second office of Solicitor of the Treasury.

THE WHISKY FRAUDS

The field officers of the internal revenue, under the authority and sanction of the Commissioner, were the detectors of frauds upon the internal revenue, and, with the district attorneys, constituted the prosecuting force. When the Nation was humiliated by the astounding revelations of the whisky frauds, there was a period of frantic enforcement activity. Commissioner Raum in his annual report, 1876, said:

When the recent whisky frauds were discovered, this office resorted to all legal remedies for its suppression and for the punishment of the offenders.

Sixty-two (62) distilleries and rectifying houses and other property were seized, of the estimated value of one million five hundred and thirty thousand seven hundred and forty-four dollars ($1,530,744); assessments were made against various distillers to the amount of one million six hundred and twenty-five thousand seven hundred and seventy-two dollars ($1,625,772); numerous suits were instituted upon distillery and other bonds, and for the recovery of taxes to the amount of three million two hundred and sixty-eight thousand four hundred and fourteen dollars ($3,268,414); and numerous indictments were preferred against three hundred and twenty-one (321) persons charged with offenses.

These proceedings have been pushed from time to time during the past two years, and have been fruitful in breaking up the conspiracies to defraud the Government of its revenues, in bringing many distillers and their sureties to bankruptcy and ruin, and numerous persons to disgrace, and in the sale of a number of distilleries and rectifying houses. And, as a result of the foregoing proceedings, about five hundred thousand dollars ($500,000) have been paid into the Treasury.

COLLECTION BY CONTRACT

Collecting the revenue by contract, although a very ancient method and still resorted to in some parts of the world, had been rarely used by this Government. In the Appropriation Act of May 8, 1872 (17 Stat., 61, 69), was an innocent looking provision that was loaded with political dynamite. Immediately following an appropriation to the Commissioner for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, and as part of the same sentence, the statute authorized the Secretary to employ not more than three persons "to assist the proper officers of the Government in discovering and collecting any money belonging to the United States * * * upon such terms and conditions as he shall deem best for the interests of the United States." No compensation was to be paid such persons except out of the money and property so secured. No person could be so employed without first setting forth in a sworn statement addressed to the Secretary the character of the claims out of which he proposed to recover and other pertinent data. If approved by the Secretary, he entered into a written contract with such person. A number of such contracts were entered into between the Secretary and private individuals in 1872 and 1873.

In the Service Monograph No. 25 of The Brookings Institution, entitled "The Bureau of Internal Revenue," appears the following account of this episode:

On August 13, 1872, a similar contract was made with John D. Sanborn, of Massachusetts, for the collection of taxes illegally withheld by 39 distillers, rectifiers, and purchasers of whisky. In the following October, Sanborn made application for a contract to collect taxes, which he alleged were withheld by 760 persons, in legacies, successions, and incomes. His request was granted 5 days after he made his application. On March 19, 1873, he applied to have a list of about 2,000 names added to his previous contract, which was also granted. This latter list included 350 foreign residents. On February 3, 1873, the Secretary of the Treasury issued the following order to all supervisors and collectors of internal revenue:

"You are requested to assist John D. Sanborn, Esq., of Boston, in the examination of official records, in reference to such cases of alleged violation of the internal revenue laws as he may ask for your cooperation.

"Mr. Sanborn is acting under an appointment from me, and may need some information from the offices of collectors and assessors for the purpose of verifying his claims."

The Commissioner of Internal Revenue protested against this manner of collecting delinquent taxes, stating that the Bureau of Internal Revenue was possessed of a full knowledge of the laws relating to the collection of the revenue, that the organization contained all the machinery necessary for a full and complete enforcement of the law, and that any other method of collecting taxes than those imposed upon the Bureau was a reflection on the Department charged with that duty.

The Commissioner's protest was of no avail, and on July 7, 1873, Sanborn was granted authority to collect from 592 railroad companies alleged to be indebted to the United States "for taxes upon dividends and interest paid upon bonds."

The Secretary of the Treasury in issuing his orders to the collectors and supervisors relative to Sanborn virtually placed the entire machinery of the

Government for the collection of taxes at his disposal. It seems that instead of his being appointed to *assist* in collecting money due the Government, the machinery of the Government was being used to *assist* him. No doubt much assistance was rendered, because he collected $427,000.

A resolution was passed on February 13, 1874, by the House of Representatives asking the Secretary of the Treasury to transmit "copies of all contracts made under authority of the Treasury Department, in pursuance to one of the provisions of the Legislative, Executive, and Judicial Appropriation Act of May 8, 1872, and also copies of all correspondence relating to the contracts, together with the amount of money paid under the contracts and by whom and under which contract paid. These were referred to the Committee on Ways and Means, which reported in part as follows:

"The committee feeling alarmed at the apparent looseness with which the law had been administered, were desirous of ascertaining where the responsibility rested, where it would seem to belong, somewhere in the Treasury Department. They have had before them the Secretary, Assistant Secretary Sawyer, and the Solicitor of the Treasury. The Secretary gave but little information and exhibited an entire want of knowledge as to the manner of making contracts, administering the law, or of the provisions of the law itself. His only connection, so far as he could remember, with these transactions was in affixing his signature to the various papers presented to him as a mere matter of office routine, without knowledge of their contents. The Assistant Secretary disclaims any particular knowledge of the law and contract, and he in like manner affixed his signature as a matter of office routine * * *. The Solicitor in turn testified * * * that he had consulted in every instance with the Secretary or Assistant Secretary of the Treasury; that he had in all cases simply obeyed the directions of his superior officers, and that the contracts and the various orders of the department were well known to the Secretary and the Assistant Secretary."

The committee looked with serious apprehension upon the apparent attempt of each of these gentlemen to transfer the responsibility from himself to others. Nevertheless the investigation developed no evidence that either of these officers had been influenced by corrupt motives. The transaction is the more singular because the Secretary had been so careful previous to the enacting of the law of 1870 in making contracts for collecting revenue from delinquents. The duties of his office were extremely arduous, and these contracts were regarded by him at the time they were made as small affairs as compared with many others which daily engaged his attention. The report also cleared the Commissioner of Internal Revenue. These contracts were made without even consulting the Commissioner and the first knowledge this officer had of the law was after the contracts had been made.

Congress thereupon repealed the statute authorizing the collection of revenue by contract. In the Act of June 22, 1874 (18 Stat., 192), not only was the prior legislation repealed in that respect, but the Secretary was directed to revoke and annul all contracts for the collection of taxes made thereunder. It also denied the Court of Claims jurisdiction to consider claims for damages by reason of the discontinuance of such contracts.

In the Act of June 19, 1878 (20 Stat., 178, 187), there was appropriated for the Commissioner of Internal Revenue:

For detecting, and bringing to trial and punishment, persons guilty of violating the internal-revenue laws, or accessory to the same, including payments for information and detection, seventy-five thousand dollars; and the Commissioner of Internal Revenue shall make a detailed statement to Congress once in each year as to how he has expended this sum.

Commencing with his annual report, 1879, the Commissioner lists carefully the amounts expended through both collectors and internal revenue agents for information leading to the discovery of frauds and bringing to trial and punishment of guilty persons. This was a requirement of the Appropriation Acts for many years and a regular feature in the annual reports of the Commissioners.

PART 6

THE NEW SYSTEM (1872 TO DATE)

A separation of the tax determining function from the tax collecting duty is sound policy. It was the basis of the collector-assessor combination of the Civil War Acts. In a postwar psychology, however, the collectors with their deputies and the assessors with their assistant assessors, both operating in the field, looked like two sets of officials doing the same job. At least so it seemed to Commissioner Douglass, who had worked out a plan. He called it "The New System." It was commendable from the standpoint of its simplicity, concentration of responsibility, economy, and the just expectation of the Nation that no more officers shall be retained than are clearly necessary for the due enforcement of the law. Under his plan the separation of tax determination from tax collection was continued, but with the former definitely lodged in the office of the Commissioner. Commissioner Douglass wrote about it in his annual report for the fiscal year June 30, 1872, page XIX, saying:

> The Act of June 6 reduced the duties of assessors and assistant assessors so as to leave but *three things*, which could not be done with equal propriety by the collectors and their deputies, two classes of officers remaining, both numerous and expensive, for a work that one class could as well do. The three duties referred to are the assessment of the *deficiency taxes on distillers*, an exceptional tax, only occasionally due, and the *data* for assessing which are always at hand from daily reports in this office. The majority of such assessments being reviewed and readjusted under the present system, all of them could as readily be certified from this office to the collectors in the first instance. This would insure uniformity of adjustment, a thing almost impossible where two or three hundred unassociated minds are reading and interpreting law and regulations. Second, the *special* or license taxes, which are collected as a general rule but once (May) each year. The special tax certificates can be issued in books, as are the spirit and tobacco stamps, and charged to the collectors at their face value, crediting them (collectors) only with cash or the unused certificates returned to this office. This system works admirably in the matter of spirits and tobacco, and can be very easily adapted to this other source of revenue. The *third*, and only remaining duty with which the collectors might not be entirely entrusted, is the tax on banks and bankers. This tax is payable but twice during each year, and is the sole remaining tax on corporations. The tax upon corporations was at one period all collected directly by this office, at a time when it extended to railroad, insurance, canal, and turnpike companies, in addition to banks and bankers. The history of this class of taxation shows that when so collected it was well collected, and the whole work done by less than 15 clerks, at an average salary not exceeding $1,400 per annum each. If 15 men could collect this tax when it reached $13,000,000 per annum and embraced 5 species under the class, all of them requiring monthly returns, it is not seen why a comparatively smaller number may not now manage one-fifth of the class, and only yielding, as estimated for the current fiscal year, $3,800,000 in all. It further appeared that the exceptional labor could be done in this office without increasing its force materially, and thus enable the discharge of the entire body of assessing officers. Inasmuch as the plan of reduction under the Act of June 6 only provided *absolutely* for the reduction of some two-thirds of the principal officers (460 in all), and left the reduction of the assistants (over 1,300) *discretionary*, it seemed to be the better plan to ask Congress to make the larger reduction and make that absolute. It is not

an easy matter to put out of commission a thousand or more officers. Experience has demonstrated that nothing short of unequivocal, inexorable law can surely do it. Discretion admits of doubt and suggests delay.

In view of the great confusion and loss of revenue anticipated by a general disturbance of the collecting offices; the simplicity and security of a system which shall have but one class of officers and those all under bonds; the fact that nothing is left for the assessing class to do that can not be done either by the collectors or this office; and that a saving of from one to two millions per annum of expense in salaries, etc., greater than would be effected under the Act of June last, can safely be anticipated, I have had prepared the outlines of a law which will give effect to the above idea. This will be presented to the proper committees of the House of Representatives and the Senate immediately upon their assemblage in December proximo. If it is the judgment of Congress that this plan is preferable to that contemplated by the Act of June, I ask their early adoption of its provisions, that it may be put into operation completely by the 30th of June, 1873.

In preparing the proposed plan I have consulted freely with the leading officers now in the service, as well as with many of those who heretofore have been prominent in it. Without an exception it has met their hearty concurrence. They have commended it with a view to its simplicity, concentration of responsibility, economy, and the just expectation of the Nation that no more officers shall be retained than are clearly necessary for the due enforcement of the law. In this recommendation I have not forgotten that the plan, if accepted by Congress, will bring personal inconvenience to many of the ablest and best citizens of the country, now and for years in the service; and while I express the tribute of this office to their intelligent, faithful, and efficient discharge of important duties, I can not but suppose that their individual loss will be largely compensated in the consciousness of a great public gain.

The legislation which ensued and which has had lasting administrative effect was the Act of December 24, 1872 (17 Stat., 401). It was entitled "An Act for the reduction of officers and expenses of the Internal Revenue." Effective July 1, 1873, the offices of *assessor* and *assistant assessor* of internal revenue ceased to exist; all duties imposed by law on assessors and assistant assessors, except as otherwise provided for, were transferred to the *collectors of internal revenue*, to be performed by them or their *deputies*.

Of far greater significance, however, was the placing with the Commissioner of the investigative and tax determining functions over all internal revenue taxes *liable to be assessed*, and which seemed to cover a major portion of the internal revenue system. Section 2 of the Act of December 24, 1872, reads (17 Stat., 402):

> That the Commissioner of Internal Revenue is hereby authorized and required thereafter to make the *inquiries*, *determinations*, and *assessments* of the following taxes, to wit: * * * and of all other internal-revenue taxes liable to be assessed, or accruing under the provisions of former Acts; and the said Commissioner shall certify such assessments, when made, to the proper collectors, respectively, who shall proceed to collect and account for taxes so certified in the same manner as assessments on lists are now collected and accounted for. [Italics for emphasis.]

The statute speaks of three functions which the Commissioner is now authorized and required to perform:

1. Inquiries.
2. Determinations.
3. Assessments.

When found in this context, the authority to make assessments takes on the characteristics of a mechanical or routine duty. The word "assessments" is thus narrowly construed only because of its context. The function of *assessing* taxes is not always so restricted. It is the authority to make *inquiries* into a person's private affairs

so as to make a *determination* of his tax liability under the law which constitutes the heart and soul of revenue administration.

The subject is again discussed by the Commissioner in his annual report, dated November 8, 1875, for the fiscal year ended June 30, 1875. In becoming appreciation of the nature of his authority, Commissioner Pratt said (pages xxx and xxxi):

> The ascertainment of liability to taxes on the part of persons, firms, associations, and corporations and the assessment of those taxes, formerly belonged to assessors. The office of assessor was abolished by Act of 24th December, 1872, *and now the Commissioner of Internal Revenue is required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by the internal-revenue law, where such taxes have not been duly paid by stamps at the time and in the manner provided by law.* He is required to certify a list of such assessments, when made, to the proper collectors, respectively, who proceed to collect and account for the taxes and penalties so certified.
>
> The power thus conferred has been exerted, within the past fiscal year, in making assessments exceeding $8,000,000. *No power more arbitrary in respect to rights of property can be conceived, since it is expressly provided that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.* Is it asked, How, then, are the rights of the citizen protected against injustice? I answer, First, in the justice of the Commissioner in making the original assessment; next, in the opportunity given him to review his action, when an appeal is made for the abatement of the tax; and, finally, when the illegal tax has been paid or collected, in the remedy which the citizen has against the United States, in suing the collector and recovering back money and interest. Though this process seem circuitous, and the redress tardy, yet no efficient tax law could afford to relax these seeming rigors, and allow the Commissioner and collectors to be thwarted at every step by injunctions and restraining orders. [Italics for emphasis.]

THE COMMISSIONER OF INTERNAL REVENUE AS OF 1875

The Commissioner of Internal Revenue had finally reached full stature as an administrative official in the Treasury Department. The Commissioner[1] is a presidential appointee, subject to Senate confirmation. He operates "under the direction of the Secretary of the Treasury." The office was deemed of sufficient importance to warrant having his own legal adviser, called the Solicitor of Internal Revenue. Both the Solicitor of Internal Revenue and the Solicitor of the Treasury were, by the Act of June 22, 1870 (16 Stat., 162), transferred from the Treasury Department to the newly organized Department of Justice. (Revised Statutes, section 349.) Each of those officers exercised their functions under the supervision and control of the head of the Department of Justice, that is, the Attorney General. (Revised Statutes, section 350.)

Whenever in his judgment the necessities of the Service required, the Commissioner could employ competent agents, not exceeding at any time 25 in number, to be paid such compensation as he deemed proper, and he could also assign the duties of any such agent. (Revised Statutes, section 3152.) He could also assign the duties of storekeepers. (Revised Statutes, section 3154.) He could also make recommendations respecting the assignments to duty of the 10

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[1] In listing his powers and duties at around the year 1875, references will now be made to the Revised Statutes, 1874 edition. The Revised Statutes are in and of themselves an enactment. In compiling the law, respecting Revised Statutes, 376, it was overlooked that section 2, Act of March 3, 1863, had been *repealed* "so far as the same applies to officers of internal revenue," by section 173, Act of June 30, 1864 (13 Stat., 303–304). But see Revised Statutes, sections 377 and 379.

supervisors. (Revised Statutes, section 3159.) Obviously, he was in control of a good working organization.

A new Commissioner, Hon. D. D. Pratt, assumed the duties of the office on May 15, 1875, made vacant by the resignation of Hon. John W. Douglass. This was during the turbulent period of the so-called whisky frauds. Commissioner Pratt makes a lengthy annual report, dated November 8, 1875. He describes in some detail how the frauds were committed and the precautions taken against their recurrence. Fortunately for posterity, he gives a fine description of his office in Washington, which is here quoted in full:

On the 15th day of May last I assumed the duties of the office of Commissioner of Internal Revenue, made vacant by the resignation of Hon. John W. Douglass.

The office force consisted of—

One Commissioner, at a salary of	$6,000
One deputy commissioner	3,500
One deputy commissioner	3,000
Seven heads of division	2,500
One stenographer	2,000
Thirty clerks, class 4	1,800
Forty-five clerks, class 3	1,600
Fifty-two clerks, class 2	1,400
Eighteen clerks, class 1	1,200
Seventy-five clerks (ladies)	900
Five messengers	840
Three assistant messengers	720
Fourteen laborers	720

By Act of Congress approved March 3, 1875, it became necessary, on the 1st of July, for me to recommend the dropping of three clerks of the third class, two clerks of the second class, five lady clerks, and two laborers. I accordingly called upon my several heads of division to inform me in writing relative to the efficiency of the individuals employed in their respective divisions, that I might be enabled with justice to dispense with the services of those who were least efficient. These reports, in my judgment, warranted a greater reduction than was contemplated by the Act referred to; and consequently I recommended the dropping of the names of 20 persons from the rolls of the office, and the appointment of 8 persons *vice* those dropped in excess of the requirements of the law. The entire number of persons now employed in the Bureau is 241, including officers. This force is divided under the law into 7 divisions, as follows, to wit:

1. DIVISION OF LAW, in charge of Charles Chesley, Esq., Solicitor of Internal Revenue, assisted by William H. Armstrong. This division is subdivided into four sections, to wit:

Section 1.—O. F. Dana, chief; in charge of frauds, seizures, suits, etc.

Section 2.—E. H. Breckenridge, chief; in charge of abatement and refunding claims.

Section 3.—Henry A. Blood, chief; in charge (excepting as hereinafter stated) of questions relating to special taxes, documentary stamp taxes, taxes on incomes, legacies, and successions, and on dividends, etc., lands purchased for the United States on distraint, and the extension of time on distraints.

Section 4.—Israel Kimball, chief; in charge of matters (including special taxes) relating to tobacco, snuff, and cigars, not in suit or in bond, and stamp taxes on medicines and preparations under Schedule A of Revised Statutes.

2. DIVISION OF ACCOUNTS, in charge of H. C. Rogers, Esq., First Deputy Commissioner, assisted by Edward Tompkins. This division is subdivided into the following sections:

Section 1.—Edward Tompkins, chief; in charge of the examination and reference of the revenue and disbursing accounts, and estimates of collectors, and of their applications for special allowances, and of all matters relative to advertising and the purchase of blank books, newspapers, and stationery for supervisors, collectors, revenue agents, etc.

Section 2.—Samuel H. Goodman, chief; in charge of the examination and reference of the monthly bills of supervisors, revenue agents, gaugers, and distillery surveyors, and of all miscellaneous claims presented to this Bureau arising under any appropriation made for carrying into effect the various internal revenue laws (excepting claims for abatement, refunding, and drawback), and the preparation of estimates for appropriations by Congress.

3. DIVISION OF STATISTICS AND DIRECT TAXES, in charge of James M. Ray, Esq., Second Deputy Commissioner. This division is subdivided into the following sections, to wit:

Section 1.—J. B. Taylor, chief; in charge of statistics.

Section 2.—C. W. Eldridge, chief; in charge of direct taxes.

4. DIVISION OF DISTILLED SPIRITS, in charge of T. A. Cushing. This division is charged with the supervision of all matters pertaining to distilleries, distilled spirits, fermented liquors, wines, rectification, gaugers' fees and instruments, approval of bonded warehouses, and the assignment of storekeepers. This division is subdivided into two sections, as follows:

Section 1.—E. S. Holmes, chief; in charge of fermented liquors, rectifiers' returns, gaugers, gaugers' instruments, and locks and seals.

Section 2.—Samuel L. Stephenson, chief; in charge of registering of stills, notices and returns of distillers' reports of surveys, plans of distilleries, approvals of warehouses, assignments of storekeepers, storekeepers' monthly reports of materials used and spirits produced, and gaugers' reports of gauging done at fruit distilleries.

5. STAMP DIVISION, in charge of E. R. Chapman. This division is charged with the supervision of the preparation, safekeeping, issue, and redemption of stamps for distilled spirits, tobacco and cigars, fermented liquors, special taxes, documentary and proprietary stamps, and the keeping of all accounts pertaining thereto.

This division also has supervision of all business with Adams Express Co., the preparation, custody, and issue of steel dies for canceling stamps; also the custody of official postage stamps, and the stamping and dispatch of the mails.

6. DIVISION OF ASSESSMENTS, in charge of C. A. Bates. This division is charged with the preparation of the assessment lists, and with the consideration of all reports and returns, except those received from distillers, rectifiers, and brewers, affording data from which assessments may be made; also, with keeping the bonded account, and with the consideration of claims for the allowance of drawback.

7. DIVISION OF APPOINTMENTS, ETC., Alexander H. Holt, chief clerk, in charge, assisted by Samuel J. Butterfield. This division is charged with all matters pertaining to appointments, commissions, leaves of absence, office discipline, assorting and disposition of the mail, registry and keeping of all letters, with the care of the general files; and all matters relating to messengers, laborers, office stationery, printing, advertising, and the preparation of blanks and blanks books for the Bureau. This division is subdivided into five sections:

Section 1.—Miss J. M. Seavey, chief; in charge of copying, preparation and charge of press copies, and recording the same.

Section 2.—Miss Annie E. Adams, chief; in charge of the registry of letters.

Section 3.—R. D. Swingle, chief; in charge of printing, circulars, specials, regulations, and blank forms.

Section 4.—George C. Kirby, chief; in charge of messengers and laborers, opening and disposition of the mail, and stationery for the Bureau.

Section 5.—Richard A. Charles, chief; in charge of the general files.

The foregoing constitute the internal working force of the Bureau. The external machinery for the collection of the revenue, including an enumeration of leading classes of manufacturers, from whom largest amount of revenue is derived, is as follows:

At present there are 209 collection districts in the United States, with a corresponding number of collectors; these collectors employ to assist them 1,205 deputies. Within their districts were 689 grain distilleries registered, 656 of which were operated during the fiscal year ended June 30, 1875, and 4,040 fruit distilleries registered, 3,945 of which were operated during the same fiscal year; also 1,247 rectifiers, 5,348 wholesale and 163,455 retail liquor dealers. During the fiscal year ended June 30, 1875, there were 2,783 brewers engaged in the manufacture of fermented liquors. There are employed 1,078 gaugers, and 1,233 storekeepers. There are 983 manufacturers of tobacco and snuff, and 15,073 cigar manufacturers; and there are employed 32 inspectors of tobacco, snuff, and cigars.

There are also employed 10 supervisors and 25 revenue agents. At the time of my taking charge of the Bureau the latter were assigned to duty under the direction of the supervisors. There were also employed special clerks to supervisors, who acted under their direction, and performed substantially the same duty as revenue agents.

The frauds which were developed just previous to my assuming the office of Commissioner led to a change in the organization and direction of this force of agents, and on the 18th day of May I issued an order organizing a division of revenue agents, with Homer T. Yaryan, Esq., as chief in charge, relieving supervisors of all responsibility in relation to directing the movements of said agents, transferring the same to Mr. Yaryan under my direction.

Subsequently, upon a careful examination of the law, I became convinced that there was no authority conferred therein for the employment of the special clerks to supervisors above referred to, and, in conformity therewith, an order was issued on the 31st day of August, informing supervisors that from and after that date the services of special clerks would be discontinued.

This action necessitated the assigning to duty, under the direction of each supervisor, two revenue agents, thereby leaving but five revenue agents, including the chief, to act under the immediate direction of this office. There have been employed in the division of revenue agents, under the direction of Mr. Yaryan, 25 persons, in examining the returns of distillers and rectifiers, and comparing the same with transcripts of the books of wholesale liquor dealers, covering the period from July 1, 1874, to the present time. These examinations have resulted in furnishing evidence by which the Government will be able to recover large amounts of tax upon spirits fraudulently manufactured by distillers, and have developed fraud in places not heretofore suspected, resulting in important seizures of distilleries and rectifying houses. It may be safely stated that at least $1,000,000 in taxes and condemned property will be recovered through the agency of this division, which otherwise would probably have been lost to the Government.

The force of revenue agents is entirely inadequate to perform the duties contemplated by law, and I therefore earnestly recommend that Congress, at its approaching session, be requested to authorize by law the employment and payment of 15 agents in addition to the present number. With such a force, I am confident that the country can be so thoroughly policed as to prevent the perpetration of fraud and greatly increase the revenue.

A few of the more important statutory duties of the Commissioner, as they appeared in Revised Statutes (1874 edition), will be listed.

Investigative, determining, and assessment authority.—The Commissioner is authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law. (Section 3182, Revised Statutes, now section 3640, Internal Revenue Code. See also section 57, Internal Revenue Code, and similar provisions throughout the Code.)

Appellate jurisdiction: Power to refund and abate. — Subject to regulations prescribed by the Secretary, the Commissioner was authorized, on *appeal* to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed *or* collected. (Revised Statutes, section 3220, compiled from Act of July 13, 1866, section 9, supra, 14 Stat., 111.) It is a contradiction of terms to refund or pay back a tax which has not been collected. Therefore, the word "remit" must be construed to authorize the abatement of a tax merely assessed, but not collected. Section 3220 is indexed under "*Abatement* of *taxes*, power of Commissioner of Internal Revenue to make." (Revised Statutes, 1873, page 1093.) Circular No. 14, issued by the Office of Internal Revenue, Washington, February 1, 1864, prescribes the "Regulations concerning claims for the remission of taxes erroneously assessed, when uncollected, etc." An explanatory note saying (page XXIV) :

By *remission*, is understood release from payment *before* collection, by *refunding*, is meant the repayment of the money *after* collection.

The authority to refund and abate, however, presupposes the authority to determine tax liability.

Commissioner Green B. Raum makes some interesting observations on this subject in his annual report, dated November 27, 1876, saying (page XXIV):

When an assessment is made by this Bureau for unpaid taxes, the person or corporation assessed, under existing laws, has the right to file an application for the abatement of such assessment, and the Commissioner of Internal Revenue is invested with certain judicial powers for the purpose of investigating and deciding the justice or legality of such assessment.

There is no provision of law, however, for the taking of testimony for the trial of these questions, which from year to year involve very large sums of money. The practice heretofore has been, and now is, to determine these questions upon *ex parte* affidavits. These answer a proper purpose in a large class of cases, involving small sums of money; but it often occurs that applications are made for the abatement of large assessments, which require the testimony of numerous witnesses, whose affidavits are frequently obtained without an opportunity for the cross-examination of the witnesses. This I regard as a very vicious system, and wholly unfitted for the just determination of judicial questions involving any considerable sum of money.

I therefore recommend very earnestly that Congress pass a law providing for the taking of depositions both on behalf of the Government and the taxpayer, with compulsory process for witnesses for the trial of such applications for the abatement of taxes as, in the opinion of the Commissioner of Internal Revenue, the public interests may require. The same may be said with regard to claims for the refunding of taxes alleged to have been erroneously or illegally assessed or collected.

The procedure based on abatement claims was the prevailing appellate procedure within the Bureau as late as the Revenue Acts of 1918 and 1921. (See section 250(d), Revenue Act of 1921.) Section 279(k), Revenue Act of 1926, abolished claims in abatement respecting income and profits taxes. (See also sections 273(j), 873, and 1014, Internal Revenue Code.)

Compromise authority. — With the advice and consent of the Secretary of the Treasury, the Commissioner "may *compromise* any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced." (Revised Statutes, section 3229, compiled from Act of July 20, 1868, section 102, supra, 15 Stat., 166; 12 Ops. Atty. Gen., 472, 474.) Section 3229 speaks of both civil and criminal cases. Here the word "suit" is applicable to either type of case. Where conviction results in a fine of a stated sum (say $10,000), or imprisonment, or both, it would be impossible to divide the criminal proceedings into two separate indictments—one for an offense punishable by imprisonment and the other for the same offense punishable by a fine of $10,000. Also the words "commencing suit" seem to have an implied subject. The Commissioner instead of commencing suit may compromise any such criminal case; and after he has already commenced suit, he could still compromise such a criminal case, with the approval of the Secretary and the Attorney General. Under the Internal Revenue Code, only the Attorney General can compromise after reference of the case to him for prosecution or defense. (Section 3761, Internal Revenue Code.)

Punishment of frauds on the revenue.— No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner authorizes or sanctions the proceedings. (Revised Statutes, section 3214, compiled from Act of July 13, 1866, section 9, supra, 14 Stat., 111; now section 3740, Internal Revenue Code.) The word "penalty" involves the idea of punishment, whether by civil action or a criminal prosecution. (*United States* v. *Reisinger*, 128 U. S., 308; *United States* v. *Chouteau*, 102 U. S., 603.) The Commissioner, with the approval of the Secretary, is authorized to spend public funds for the detection and bringing to trial and punishment of persons *guilty* of violating the internal revenue laws. (Section 3463, Revised Statutes, compiled from section 7, Act of March 2, 1867, 14 Stat., 473; now section 3792, Internal Revenue Code.)

Authority to make regulations.— It was the duty of the Commissioner, with the approval of the Secretary, to establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals, respecting suits arising under the internal revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws. (Revised Statutes, section 3215, compiled from Act of March 2, 1867, section 3, supra, 14 Stat., 472.)

By way of contrast, Revised Statutes, section 377, which grew out of the statutory duties of the Solicitor of the Treasury, provided:

> The Solicitor of the Treasury shall establish such regulations, not inconsistent with law, with the approbation of the Secretary of the Treasury, for the observance of collectors of the customs, and, with the approbation of the Attorney-General, for the observance of district attorneys and marshals respecting suits in which the United States are parties, as may be deemed necessary for the just responsibility of those officers, and the prompt collection of all revenues and debts due and accruing to the United States. *But this section does not apply to suits for taxes, forfeitures, or penalties arising under the internal-revenue laws.* [Italics for emphasis.]

Section 377 is represented as being compiled from the Act of May 29, 1830, section 7 (4 Stat., 415), which was passed at a time when there were no internal revenue taxes. The origin of the concluding sentence is difficult to place. Obviously, it was not in section 7, Act of May 29, 1830. The marginal notes are silent on the point. Since section 7 of the Act of May 29, 1830, had no bearing upon suits for taxes, forfeitures, or penalties arising under the internal revenue laws, the concluding sentence, above quoted, must have been based upon the subsequent legislation from which Revised Statutes, sections 3214 and 3215, supra, were compiled.

There has been no substantial change in the statutory position of the Commissioner and his office from the Act of December 24, 1872, to the present day. The income tax provisions of the Tariff Act of 1894 (sections 27 seq., 28 Stat., 553–560) enacted a procedure which would have given the collectors and deputy collectors the same powers of examination and determination of tax liability as were exercised by the assessors and assistant assessors under the Civil War Acts. The income tax of 1894 was invalidated by the Supreme Court in the spring of 1895. (*Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S., 429, 15 Sup. Ct., 673; ibid., 158 U. S., 601, 15 Sup. Ct., 912.)

The Board of Tax Appeals was created by the Revenue Act of 1924 and continued by the Revenue Act of 1926. The Board, now called The Tax Court of the United States, has authority to overrule the Commissioner and to invalidate a regulation of the Treasury Department, in cases coming under their jurisdiction. By section 504, Revenue Act of 1942, its name was changed to the present designation, The Tax Court of the United States.

As before stated, there has been no substantial change in the statutory duties and responsibilities of the Commissioner of Internal Revenue since the Act of December 24, 1872. Restated in their present form, the following constitute an effective battery of powers and duties in full operation at this moment:

1. Under the direction of the Secretary, the Commissioner has general superintendence of the assessment and collection of all internal revenue taxes. (Section 321, Revised Statutes; section 3901, Internal Revenue Code.)

2. With the approval of the Secretary, he shall prescribe and publish all needful rules and regulations for the enforcement of the internal revenue laws. The Commissioner may also make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue. (Sections 3791 and 3644, Internal Revenue Code.)

3. Congress has delegated to the Commissioner the exclusive authority in the Treasury Department to make inquiries, determinations of liability, and assessments of internal revenue taxes and penalties. (Section 3182, Revised Statutes; sections 57, 824, 1010, 3612(f), and 3640, Internal Revenue Code.)

4. With the approval of the Secretary, the Under Secretary, or an Assistant Secretary, the Commissioner may compromise any civil *or* criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense. (Section 3229, Revised Statutes; section 3761, Internal Revenue Code.) Being special and not general legislation, section 3229 is exclusive to the extent that it applies. (Opinion of the Attorney General dated October 24, 1933, C. B. XIII–2, 442, 443.)

5. Except as otherwise provided by law, and subject to regulations prescribed by the Secretary, the Commissioner is authorized to remit, refund, and pay back all taxes, etc., erroneously or illegally assessed or collected. (Section 3220, Revised Statutes; sections 3770 and 3777, Internal Revenue Code.)

6. No suit shall be maintained in any court for the recovery of any internal revenue tax until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard and the regulations of the Secretary. (Section 3226, Revised Statutes; section 3772, Internal Revenue Code.)

7. In the absence of fraud or mistake in mathematical calculation, the findings of fact in *and the decision of* the Commissioner upon the merits of any claim presented under the internal revenue laws shall not (except as to The Tax Court) be subject to review by any other administrative or accounting officer or employee of the United States. Section 3790, Internal Revenue Code, was drawn to preclude the Comptroller General from reviewing the Commissioner's decisions.

8. No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner authorizes or sanctions the proceedings and the Attorney General directs that the suit be commenced. (Section 3214, Revised Statutes; section 3740, Internal Revenue Code.)

9. With the approval of the Secretary, the Commissioner is authorized to pay such sums as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same. (Section 3792, Internal Revenue Code.)

The office of Commissioner has a considerable number of additional powers and duties, but the foregoing enumeration lists the more important ones. The most important attribute of his office is, perhaps, that of being the only Government official holding the statutory power of inquiry and determination of internal tax liabilities. Those duties constitute what is generally referred to as the audit jurisdiction. In our internal revenue system, the Commissioner acquired that function by the Act of December 24, 1872, supra, and has retained it ever since. On the general subject see *Sybrandt et al.* v. *United States* (1884), 19 Ct. Cls., 461; 20 Ops. Atty. Gen., 654; 20 Ops. Atty. Gen., 714; 38 Ops. Atty. Gen., 94, 98, and 124.

ADMINISTRATIVE CONTROL OVER PERSONNEL

The administrative control over the official lives of Government personnel sometimes plays a leading role in the assignment of important work. The office of the Commissioner of Internal Revenue having become firmly established as the investigative and tax determining authority, it is apparent that the technical aspects of income tax administration would be assigned by him either to the collectors or to the employees of his own office. A realistic appraisement of the present statutory offices of collector and deputy collector, and the Income Tax Unit auditor and internal revenue agent, is essential to a complete understanding of the division of labor within the Bureau organization. For that purpose the manner of appointment and nature of the respective jobs will be briefly summarized. References are to the Internal Revenue Code.

COLLECTORS OF INTERNAL REVENUE

Collectors of internal revenue are appointed by the President, by and with the advice and consent of the Senate (section 3941). The whole number of collectors of internal revenue shall not exceed 65 (section 3940). The Commissioner has no authority to *dismiss* a collector of internal revenue. The Commissioner has authority to *suspend* a collector for fraud, or gross neglect of duty, or abuse of power (section 3942(a)). In case of such suspension of a collector, the Commissioner shall report the case to the President, through the Secretary of the Treasury, for such action as he may deem proper (section 3942(b)).

It is the duty of the collectors or their deputies to collect all the taxes imposed by law, however the same may be designated (section 3651(a)). Every collector within his collection district shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall

aid in the prevention, detection, and punishment of any frauds in relation thereto (section 3654(a)). Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay *any* internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects (section 3600).

If the taxpayer fails to file a return at the time prescribed by the law or regulations or makes, willfully or otherwise, a false or fraudulent return, the collector (or deputy collector) shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise (section 3612(a)). To enable him to perform these duties, the collector has authority to *summon* any person to appear before him and produce books and records and give testimony under oath, "respecting any objects or income liable to tax" or respecting the returns thereof (sections 3615 and 3654(a)).

It is the duty of every collector having knowledge of any willful violation of any law relating to the revenue, within 30 days after coming into possession of such knowledge, to file with the district attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provisions of law believed to be violated on which reliance may be had for condemnation or conviction. (Section 3164, Revised Statutes; section 3745(a), Internal Revenue Code.)

DEPUTY COLLECTOR OF INTERNAL REVENUE

Section 404 of Reorganization Plan No. 2, ratified legislatively by Public Resolution No. 20, Seventy-sixth Congress, provided, effective July 1, 1939, that:

> Except as prohibited by section 3(b) of the Reorganization Act of 1939, all functions relating to the appointment, fixing of compensation, transfer, promotion, demotion, suspension, or dismissal of persons to or from offices and positions in any department vested by law in any officer of such department other than the head thereof are hereby transferred to the head of such department and shall be administered under his direction and supervision by such division, bureau, office, or persons as he shall determine.

Pursuant to the above-quoted authority, on and after July 1, 1939, the appointive power over deputy collectors was transferred from the collectors to the Secretary of the Treasury. Under the provisions of Executive Order 8743, dated April 23, 1941, extending the classified civil service under the authority of the Act of November 26, 1940 (Ramspeck Act), the deputy collectors employed in the offices of the collectors of internal revenue on January 1, 1942, who met certain qualifications, were under prescribed conditions given a classified civil service status. Since that time, the position of deputy collector holds classified civil service status. The procedures and internal organization of the Bureau, however, were developed long prior to those important reforms in the appointment and status of deputy collectors. Prior to that time each collector was authorized to appoint, by an instrument in writing under his hand, as many deputies as he thought proper (section 3990, Internal Revenue Code). In this respect the collector was circumscribed only by the fact that the com-

pensation of a deputy collector was fixed by the Secretary, upon recommendation of the Commissioner (section 3990). Each collector had power to revoke the appointment of any deputy collector, giving such notice as the Commissioner may prescribe (section 3991).

It is plain that prior to the action taken under the Reorganization Act of 1939 transferring the appointive power over deputy collectors to the Secretary of the Treasury, a newly appointed collector had the statutory right, upon taking office, to drop from the service any deputy collector in commission and to appoint deputies of his own selection. In fact, the Attorney General of the United States held that a vacancy occurring in the office of the collector of internal revenue and the appointment of a successor collector would seem to have the effect of vacating the offices of the deputy collectors. (26 Op. Atty. Gen., 363.)

INTERNAL REVENUE AGENTS

The Commissioner of Internal Revenue, whenever in his judgment the necessities of the Service so require, may employ competent agents, who shall be known and designated as *internal revenue agents*, and, except as provided for by statute, no general or special agent or inspector of the Treasury Department in connection with internal revenue shall be appointed, commissioned, or employed (section 4000). Section 4000 is derived from Revised Statutes, section 3152. The position of internal revenue agent was brought into the classified civil service May 6, 1896. The old statutory provisions which limited the number of internal revenue agents which may be lawfully employed are practically nullified by subsequent Revenue and Appropriation Acts, which provide appropriations for the employment of such agents as may be necessary to administer the law.

Under the Deficiency Appropriation Act of June 25, 1910, the Commissioner of Internal Revenue was authorized to appoint internal revenue agents and inspectors, with the approval of the Secretary, to carry out the provisions of the Corporation Excise Tax Act of August 5, 1909. These appointments were required to be made in accordance with civil service regulations. Persons so employed were subsequently merged into the income tax force. The Act of October 3, 1913, authorized the appointment by the Commissioner, with the approval of the Secretary, of all necessary agents and inspectors for the purpose of carrying out the provisions of the income tax laws. The persons so appointed were covered into the classified civil service October 3, 1915. Section 1301(c), Revenue Act of 1918, provided appropriations for the employment of such internal revenue agents, etc., as may be necessary. The number of internal revenue agents is limited thereafter only by the amount of the appropriation available to pay them.

The Commissioner may assign any internal revenue agent to such duty as he may deem necessary, whether in Washington or in the field (sections 4001, 4002). The internal revenue agent has all the powers of entry and examination conferred upon any officer of internal revenue by section 3601. It is his duty to see that all laws and regulations relating to the collection of internal revenue taxes are complied with (sections 3654(c), 4003(c)).

To summarize, the collector of internal revenue is a presidential appointee, confirmed by the Senate. The office of collector is not,

strictly speaking, subordinate to that of the Commissioner of Internal Revenue, although he is bound by the rules and regulations of the Bureau. Until recent years the deputy collectors had no civil service status and were appointed and discharged at the will of the collectors.

There are 64 independent collectors scattered over the country; there is one Commissioner of Internal Revenue located at the seat of the National Government, with offices situated near those of the Secretary of the Treasury.

The internal revenue agent has always been appointed by the Secretary, or by the Commissioner, with the approval of the Secretary. He may be dismissed for good cause by the Commissioner and the Secretary. The Commissioner assigns his duties and fixes his post of duty. In other words, at the time the important policy decisions in respect of procedure in the Bureau were being made, the internal revenue agent was a classified civil service employee, subject directly to the administrative control and discipline of the Commissioner. This enabled the Commissioner to recruit and to make of the internal revenue agents, whether in the field or in Washington, a more cohesive and uniformly trained force for the performance of a difficult program of work.

PART 7

THE DEVELOPMENT OF THE AUDIT JURISDICTION OVER INCOME RETURNS

The audit jurisdiction over income returns is the cornerstone of the administration of income and profits taxation. The audit jurisdiction now being the exclusive statutory function of the Commissioner, the problem becomes one of a division of labor, or where and how to delegate such authority within the internal revenue organization. A brief exploration will be made into the historical background of the audit jurisdictions within the Bureau, over returns of income. History can explain many things where logic fails.

At the close of the fiscal year ended June 30, 1909, according to the Commissioner's annual report for that year, there were the following divisions in the Bureau of Internal Revenue:

Assessment Division.
Chemistry Division.
Claims Division.
Distilled Spirits Division.
Law Division.
Miscellaneous Division.
Revenue Agents' Division.
Stamp Division.
Tobacco Division.

The very names of the divisions give an accurate conception of the internal revenue system at that time. At the close of the fiscal year 1909 there were 285 persons employed in the Bureau in Washington, including one Commissioner, two Deputy Commissioners, and nine division heads. In the field, there were 65 collection districts, 1,154 deputy collectors, 40 revenue agents on the regular roll (Rev. Stat., 3152), and 65 revenue agents and inspectors on the denatured alcohol roll. (See annual report, 1911, pages 7–8.) This was near the close of an old order, and on the eve of a revolutionary change in the Federal tax structure.

ACT OF AUGUST 5, 1909

The modern era in the Bureau's development dates from the Tariff Act of August 5, 1909, section 38, imposing a special excise tax upon corporations, measured by net income. This law marked the advent of the present system of income taxation. Even though it is not legally correct to call it an income tax, yet it was measured by the same concept of statutory "net income" as obtains in our form of income taxation under the sixteenth amendment. A new division, called the Corporation Tax Division, was established in the Commissioner's office in Washington to handle the new tax.

The fourth, fifth, and sixth paragraphs of section 38 contain the body of the administrative provisions of the Act. We shall here

paraphrase the language of the statute. Whenever evidence shall be produced before the Commissioner which in his opinion justifies the belief that the return made by any corporation is incorrect, or whenever any collector shall report to the Commissioner that any corporation has failed to make a return as required by law, the Commissioner may require from the corporation such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner for the purpose of ascertaining the *correctness* of such return or for the purpose of making a return where none has been made, was thereby authorized, "by any regularly appointed *revenue agent* specially designated by him for that purpose," to examine any books and papers bearing upon the matters required to be included in the return. Upon the information so acquired the Commissioner may amend any return or make a return where none was made. All proceedings taken by the Commissioner under these provisions "shall be subject to the approval of the Secretary of the Treasury." All returns shall be retained by the Commissioner, who shall make assessments thereon. When the assessment shall be made, the returns, together with *any corrections thereof which may have been made by the Commissioner*, shall be filed in the office of the Commissioner and shall constitute public records and be open to inspection as such.

When an examination of "books and papers" for the purpose of ascertaining the "correctness" of a return is required by statutory words to be performed "by any regularly appointed revenue agent specially designated by him (the Commissioner) for that purpose," and when the Commissioner, and not the collector, is authorized to make corrections and retain all returns, there can be no question but that field investigations of such returns were performed by the Commissioner's office through the Revenue Agents' Division or by traveling auditors; and the auditing and tax determining functions were performed by the Commissioner through the Corporation Tax Division.

Thus by mandate of the statute the collectors were precluded from exercising, as of right, any material jurisdiction over the field investigation and audit duties respecting the immediate forerunner of our modern income tax. Any activities by collectors' employees in examining such returns were acquired by delegation, occasioned by the limited size of the revenue agents' field force, and would necessarily have been of a preliminary or routine nature, all subject to close review by the Corporation Tax Division in Washington. A tax based upon income, or measured by income, requires a training different from that needed in other fields of taxation. With a new tax, the administrative tendency is to control the situation closely from the headquarters offices, until a body of precedents is established and an adequately trained field force is developed. Also, the protection of civil service status contributed to the building up of a permanent and well trained force of revenue agents. For these reasons, both legal and practical, the collectors never acquired any audit jurisdiction in their own right over the corporation excise tax returns. The head start thus acquired by the revenue agents and their reviewers and superiors in the Commissioner's office at Washington accounts in large measure for their dominant position to-day in the field administration of the income tax. Any audit jurisdiction held

by the collectors has been granted largely through necessity of the workload, and with some caution.

In the annual report for 1911 appears the following comment by the Commissioner regarding the administration of the special excise tax on corporations:

> Without exception there is complaint from every collector and agent that his force is overworked and underpaid. Careful investigations by our traveling auditors indicate that the conditions reported actually exist. For these reasons it is earnestly urged that the small additional appropriation asked for the field force should also be allowed. Furthermore, a considerable amount of tax due the Government escapes collection every year on account of lack of sufficient force to properly canvass all sections of the country.
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> The work of investigation in several of the important business centers of the country has not been carried out to the extent that the results obtained show is imperative, because of lack of appropriation to provide a sufficient trained field force. The force now engaged on the work of investigating the returns of the various corporations is constantly showing increased efficiency, and their work is most valuable to the Service. It is estimated that the examinations already made have resulted in increasing the tax collections reported by the companies themselves by approximately $550,000. We now have only 15 agents and inspectors engaged on this work. In the deficiency appropriation for the present year, and in the regular appropriation for the coming year, a sum is asked for that will permit us to add 15 competent men to this force. With the addition of this small number of employees there seems to be no question but that a tax liability, at the lowest estimate, of $500,000 additional, and in all probability considerably in excess of this amount, could be disclosed and the money collected.
>
> The work of administering this law has progressed much more smoothly during the past year than during the first year. The corporations themselves, as well as the officers of this Bureau, have acquired a much better understanding of the requirements. In the *Corporation Tax Division* of the Bureau in Washington the work of *examining* the returns, entering the assessments, and compiling the statistics, court records, and other data has progressed in a most commendable manner, evidencing a most careful study of the law and its requirements by each and all of the persons connected therewith, and a most commendable degree of efficiency. In the field, practically without exception, the collectors of internal revenue have given to the corporation tax work their personal attention, and by assigning thereto none but high-grade deputies and clerks a marked improvement in the *examining* and *listing of returns* is noted. In fact, throughout every branch of the Bureau there is every evidence that constant effort has been and is being made to secure the best possible results in the administration of this new law. The cooperation on the part of the corporations themselves has been most commendable and gratifying.

Clearly the force of revenue agents was too small to do the job, and "high-grade deputies and clerks" of the collectors' offices assisted in "examining" the returns; but under the statute they could not examine the books and papers of the taxpayer.

Among the Commissioner's recommendations for the same year is a plea for increased salaries for collectors and their employees, as well as these observations concerning the insecurity of the deputy collectors:

> It appears that the attention of Congress should again be called to the present anomalous situation of deputy collectors with regard to the civil service laws. Deputy collectors are appointed and commissioned by the various collectors of the various districts, and their commissions expire with the expiration of the commission of the collector by whom appointed. It would further appear that a collector has the right to summarily dismiss at any time any deputy collector commissioned by him, provided such action is not taken on account of race, religion, or politics of the deputy. As to the selection of the successor of such deputy, the collector is controlled by the ordinary civil

service requirements. Deputy collectors, therefore, are subject to all the restrictions and limitations imposed by civil service laws and regulations and are afforded but little protection thereunder. It appears but reasonable and just that if these officers are to be subjected to the disadvantages of the civil service law, Congress should certainly grant to them the permanency of position that is assured to other civil service employees.

The annual report for 1913, dated November 1, 1913, shows that "the work of investigating the returns of annual net income of corporations to ascertain whether the return had been properly made" was performed by a limited force of revenue agents. The Corporation Tax Division continues to operate. Meanwhile the sixteenth amendment had been adopted, and the first enabling Act thereunder, the Act of October 3, 1913, had been passed. The report for the fiscal year 1913 takes note of this legislation and states, "It is realized that this work will be under the income-tax law next year" (page 13).

ACT OF OCTOBER 3, 1913

The Act of October 3, 1913, imposed an income tax upon the net incomes of persons and of corporations. As regards the tax on individuals, section II D provides:

> The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

As regards the tax on corporations, Section II G (c) and (d) provide in part:

> All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.
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> * * * * * * *
>
> (d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such * * *.

By these provisions the collectors acquired a concurrent and initial audit function over *individual* income returns, with right of appeal by the taxpayers to the Commissioner. The same provisions are carried into section 19 of the Revenue Act of 1916; and section 228 of the Revenue Acts of 1918 and 1921. They disappear entirely in the Revenue Act of 1924, because they would have been cumbersome to operate at that time under the statutory notice procedure established in connection with the Board of Tax Appeals. (Section 274 and Title IX, Revenue Acts of 1924 and 1926.) Under the 1916 Act, in the case of no return or in cases of erroneous, false, or fraudulent returns, the Commissioner could make a return upon information obtained, or require the necessary corrections to be made. This authority related to both individual and corporate taxpayers. (Sections 9(a) and 14(a), Act of September 8, 1916; articles 42 and 221, Regulations 33 (Rev.).) Concerning *corporate* income returns, the collector's statutory function seems never to have consisted of more

than receiving them and transmitting them "*forthwith*" to the Commissioner. (Section 13(b), Act of September 8, 1916; Section II G(c), Act of October 3, 1913.)

The provisions of Section II D, above quoted, taken in conjunction with the collector's duty to canvass his district and make returns for delinquent taxpayers (sections 3172 and 3176, Revised Statutes; now sections 3600 and 3612(a), Internal Revenue Code), have led to some question about the completeness of the Commissioner's authority over individual income returns under the Revenue Acts of 1913, 1916, and 1917.

In view of the plain language of sections 9(a) and 14(a), Revenue Act of 1916, and of sections 3182 and 3176, Revised Statutes (now sections 3640 and 3612, Internal Revenue Code), there never should have been any doubts engendered on that subject. Admittedly, however, the assumed conflict in the statutory language was cured by section 1317, Revenue Act of 1918, which amended section 3176, Revised Statutes, in the following respects:

(1) Section 3176, Revised Statutes, had long required the *collector or deputy collector*, in respect of any delinquent taxpayer, to make a return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. The 1918 Act *added* a new sentence and amended an old one, as quoted below:

> In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or *amend any return made by a collector or deputy collector.* Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector *and approved by the Commissioner,* shall be prima facie good and sufficient for all legal purposes. [Italics for emphasis.]

By the foregoing amendments the Commissioner was granted, ostensibly for the first time; specific authority to make a return on his own initiative, or to *amend* a return made by a collector or deputy collector; also the returns so made by the collector or deputy collector must now be approved by the Commissioner to be good for all legal purposes. See "Law of Federal Income Taxation," by Mertens, volume 9, section 49.06, page 11. As a matter of fact, however, the Commissioner already had the specific authority to make returns of income, both individual and corporate, on his own initiative, by virtue of sections 9(a) and 14(a) of the 1916 Act; and under Section II D of the 1913 Act, above quoted, the Commissioner, on appeal to him from a collector's decision, had the final word.

(2) The 1918 amendments to section 3176 went further. We have seen that the collector or deputy collector could make a return, and that the Commissioner could amend it, if he thought proper, or make one himself. Section 3176 also contained a sentence that "The Commissioner of Internal Revenue shall assess all taxes, other than stamp taxes, as to which returns or lists are so made by a collector or deputy collector." This sentence was amended to read:

> The Commissioner of Internal Revenue shall *determine* and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. (Section 3612(f), Internal Revenue Code.)

In other words (and as though section 3182, Revised Statutes, then outstanding, were not enough), the Commissioner was granted authority to *determine* the tax liability in all returns so made by the collector or deputy collector. This authority is considered to be even

more important than the power to make or amend a return. It now appears as subsection (f) of section 3612, Internal Revenue Code. The authority to assert deficiencies in tax liability, pursuant to the procedure before The Tax Court (formerly the Board of Tax Appeals) must be placed in one office. It is the Commissioner who determines that there is a deficiency in liability and it is the Commissioner who is authorized to send a statutory notice of such deficiency by registered mail. (Section 272, Internal Revenue Code.)

The procedural situation based upon section 228, Revenue Act of 1918, and the 1918 amendments to section 3176, Revised Statutes, is described in article 451, original Regulations 45, promulgated April 16, 1919, as Treasury Decision 2831. The departmental regulations provided:

ART. 451. UNDERSTATEMENT OF INCOME.—If a collector suspects that the amount of any income is understated in a return, he may on his own initiative take up the matter with the taxpayer and upon becoming satisfied that the amount was understated may increase it accordingly, subject to the right of the taxpayer to appeal to the Commissioner. The Commissioner, however, without the intervention of the collector may exercise original jurisdiction in cases of understatements or other errors in returns, in which event sections 250 and 1305 of the statute and section 3176 of the Revised Statutes, as amended by section 1317 of the statute, are applicable instead of section 228. See articles 1002, 1005 and 1711.

See also articles 1701 and 1702, Regulations 45, relating to the Advisory Tax Board and the procedure before that body.

The Revenue Act of 1918 also attempted to spell out an administrative system for assessing and collecting income and profits taxes. Section 250 is devoted to that purpose. Section 250(b) provides in part:

(b) As soon as practicable after the return is filed, the Commissioner shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the installments shall be recomputed * * *.

Article 1012, original Regulations 45, relating to the Commissioner's duty under section 250(b), read as follows:

ART. 1012. ASSESSMENT OF TAX.—When the returns are received at the collectors' offices, they are examined and listed before being forwarded to the Commissioner. If it appears that the tax is greater or less than shown in the return, it is recomputed. After checking the figures the Commissioner assesses the tax on the basis of the collectors' lists. The collectors then send out bills for the taxes, either as computed by the taxpayer or as recomputed. If a taxpayer believes that he has been overassessed, he may file a claim for abatement or (after payment of the tax) for a refund of the excess. See section 252 of the statute and articles 1031–1038. *As soon as practicable the returns are carefully audited by accountants in the office of the Commissioner at Washington, assisted where necessary by reports of the examination of taxpayers books and records made by revenue agents in the field.* If error in a return is detected, the taxpayer is notified accordingly and an additional assessment is made against him or he is given the opportunity to file a claim for a refund, as the case may be. Any assessment must be made within five years after the return was due or was made, except in the case of false returns with intent to evade the tax. See sections 228, 1305 and 1318 of the statute and articles 451 and 1711. [Italics for emphasis.]

The extract from section 250(b), above quoted, was reenacted in section 250(b), Revenue Act of 1921. With some revision in terminology, it became section 271, Revenue Act of 1924, reading in full as follows:

EXAMINATION OF RETURN AND DETERMINATION OF TAX

SEC. 271. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

It is now section 57, Internal Revenue Code. Identical authority is granted the Commissioner respecting estate taxes (section 824), gift taxes (section 1010), and excess profits taxes (section 729). Section 3182, Revised Statutes (now section 3640, Internal Revenue Code), has continuously provided:

SEC. 3182. The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal-revenue act, where such taxes had not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. * * *

Sections 3182 and 3176, Revised Statutes, long antedated sections 57, 824, and 1010 of the Internal Revenue Code. Sections 3182 and 3176 (now sections 3640 and 3612, Internal Revenue Code) are broad enough to cover income, estate, and gift taxation, or any other internal taxes collected through the medium of returns or lists. Notwithstanding the continuous existence of sections 3182 and 3176, Revised Statutes, the specific provisions of sections 57, 729, 824, and 1010, Internal Revenue Code, were enacted with respect to income, profits, estate, and gift taxes. A special statute dealing with a restricted subject matter in a particular way will prevail over a general statute whose comprehensive terms would, if standing alone, include the same matter as the special provisions. Therefore, the Commissioner's authority with respect to such taxes (income, profits, estate, and gift) is based upon particular as well as general statutory language; whereas in respect of *other* taxes collected by the use of returns or lists (such as sales taxes and other miscellaneous taxes), the Commissioner's position stems from, among others, sections 3612(f) and 3640, Internal Revenue Code.

By section 3640 the Commissioner is not only authorized, but is "*required*," to make (1) the inquiries, (2) determinations, and (3) assessments of *all* taxes and *penalties* not paid by stamp. If the Commissioner is *required* to do such things, it is not seen that anyone else may exercise such prerogatives except through delegation from the Commissioner. By section 3612, however, in case of no return or of an incorrect return, the collector may make a return from his own knowledge and information. This means the authority to investigate those who have filed no return; to examine those who have filed incorrect returns; and to make a tentative tax determination, subject to approval by the Commissioner. By subsection (f) of section 3612, the Commissioner has the authority to *determine* and *assess*, but under subsections (a) and (b), the authority to make returns is given to the collectors as well as the Commissioner. Sections 3640 and 3612 must be reconciled in order to fix the audit jurisdiction over miscellaneous returns. It is sometimes said that the audit jurisdiction in miscellaneous tax returns is *joint*, as between the collectors and the Commissioner (Miscellaneous Tax Unit). The word "joint" is a misnomer, when used in that connection, since the Commissioner's authority to *amend* a return made by

a collector or deputy collector, and to *determine* and *assess* the tax, is expressly granted by section 3612.

The combination of sections 57, 824, 729, 1010, 3612 (b) and (f) leads inescapably to the conclusion that as to income, profits, estate, and gift taxes, the Commissioner has the exclusive statutory authority of examination and tax determination by both general and specific provisions. As to those taxes, therefore, the collectors' position must be based upon such audit jurisdiction as the Commissioner decides to delegate to them. As to all other internal revenue taxes, for which returns or lists are required, the Commissioner has the exclusive statutory authority of tax determination, and the superior right of examination, since by section 3612(b), he may either make a return or amend any return made by a collector or deputy collector. It is plain that in the area of miscellaneous taxes the collectors may be regarded as having only concurrent, original, *examining* or *investigative* authority. By section 3600, the collector shall canvass his district for persons and objects liable to tax, and make a list of such persons and enumerate said objects. By section 3612(a), the collector may make a return for a taxpayer who has willfully or *otherwise*, made a *false* or fraudulent return. This is original investigative authority conferred by statute, with implied right to make a preliminary or tentative tax determination. The Commissioner has the same original investigative authority (section 3612(b)), with right to *amend* any return made by the collector or deputy collector, and with exclusive power to *determine* the correct tax liability. By section 3614 the Commissioner may delegate the investigative function to any officer or employee "of the Bureau of Internal Revenue, including the field service."

PUBLIC RECORDS—INSPECTION OF RETURNS

The administrative duty to examine the return, determine the correct tax liability, and assess and collect the same, are covered by express provisions of statute. Such matters should not be identified with questions connected with public records and inspection of returns. Such matters are covered by their own statutory provisions. There is no occasion to confuse the two subjects.

As regards making income returns public records, Section II G(d), Act of October 3, 1913, provided:

> (d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided*, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: * * *.

It is noted that *after* the assessment has been made as provided elsewhere in said Section II, together with any corrections which may have been made by the Commissioner, *then* the returns shall constitute public records open to inspection as such. Section 55, Internal Revenue Code, is devoted to the "Publicity of Returns." Section 55(a) provides:

> (a) PUBLIC RECORD AND INSPECTION.—
> (1) Returns made under this chapter upon which the tax has been determined by the Commissioner shall constitute public records; but, ex-

cept as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President.

(2) And all returns made under this chapter, subchapters A, B, D and E of chapter 2, subchapter B of chapter 3, chapters 4, 7, 12 and 21, subchapter A of chapter 29, and chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commission may prescribe a reasonable fee for furnishing such copy.

Here again the statute is clear. Returns upon which "the tax has been *determined by the Commissioner*" shall constitute public records. They shall be open to public examination and inspection under regulations promulgated by the President. Certified copies of such returns shall be furnished, upon request, under regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner's statutory powers and duties as a tax investigator, determinator, and administrator are not adversely affected by the provisions relating to the publicity of returns.

HISTORY GLEANED FROM THE ANNUAL REPORTS

The annual reports of the Commissioner reveal the organizational changes and the psychology prevailing during those early years. During the fiscal year 1914 the average number employed in the *field* included: 63 collectors, 1,568 deputy collectors, 40 internal revenue agents on the regular roll, 34 agents on the income tax roll, 13 agents on the corporation tax roll, 34 inspectors on the income tax roll, and 2 inspectors on the corporation tax roll.

In commenting upon the passage of the Act of October 3, 1913, the Commissioner makes these significant observations in his annual report for 1914:

Because of the similarity in all essential particulars of the two laws, the merging of the administration of the old law into that of the new was accomplished with the least degree of friction or difficulty. In fact, the organization which had been built up for the administration of the special excise tax law adjusted itself without interruption to an effective administration of the income tax law (page 15).

* * * * * * *

Under the income tax law quite a number of additional revenue agents and inspectors have been appointed, but these were assigned to duty so late in the year that they were unable to do much more than familiarize themselves with their duties preparatory to the campaign of examinations that is now being inaugurated and enforced with vigor throughout the country. Because of the fact that the books of most of the larger corporations have been examined and inaccuracies in making returns have been corrected, and because of the fact that corporations have come to better understand the requirements of the law and are making returns more in conformity with the rulings of the Department, it is probable that the field examinations will not hereafter disclose great discrepancies in the statement of net income. However, there will be ample work in the field for a large and efficient force of examiners. The results thus far have demonstrated that the amount of taxes recovered has increased in a ratio commensurate with the increase in the number and efficiency of the examining officers. While the officers more recently appointed are thus far without experience in this line of work, some of them are demonstrating their fitness and ability to do effective work, and gratifying results are anticipated. Others have demonstrated their incapacity for this line of work, and unless unexpected improvement is made must necessarily be removed from the Service. With this increased field force becoming more efficient with experience, it is contemplated that a great many more examinations shall be made during the

current year, and it is confidently expected that the result will more than justify the expense involved (page 16).

* * * * * * *

The work of investigating the returns of annual net income of corporations and checking them with their books or annual reports for the purpose of determining whether or not all taxable income had been returned has been prosecuted with all possible vigor, such investigations being limited only by the force of revenue agents available for this purpose. As a result of these investigations and adjustments made in this office more than $2,000,000 of taxes have been assessed during the year covered by this report in excess of the amount assessable on the basis of the net income returned.

Because of the addition to the field force of a large number of agents and inspectors, these investigations are now covering a larger scope of territory than has been possible to cover with the limited force heretofore available for this purpose, and the results should be correspondingly increased, at least as to the number of corporations examined.

The benefit accruing from the field examinations, while made for the primary purpose of verifying returns, is not to be measured entirely by the amount of omitted taxes uncovered. These examinations are educational in character, in that the corporations gain from intelligent and competent examiners a clearer conception and understanding of the law and regulations, and are induced to install, if they have not already done so, a system of bookkeeping and accounting that will enable them to make their returns in conformity with the requirements of this office. This campaign of education will of itself result in returns which are more nearly true and accurate, and consequently more readily handled by the Bureau (page 19).

Immediately after the approval of the Act of October 3, 1913, providing also for a tax on the net incomes of individuals, the preliminary work of organizing the Personal Income Tax Division was begun. In the 1914 report, under the broad heading "Income Tax," appear the statistical summaries of the work of two divisions, namely, the "Corporation Income Tax Division" and the "Personal Income Tax Division." In other words, the name of the "Corporation Tax Division" was changed to "Corporation Income Tax Division" and a new division created to cover the personal income tax problems. It is significant to note that the "Revenue Agents' Division" remains undisturbed. There is no mention made as yet of an "income tax unit."

There was no change of major importance made in the income tax administration as a result of the Act of September 8, 1916, although considerable attention was then devoted to setting up the machinery for handling the newly imposed Federal estate tax.

REORGANIZATION OF BUREAU IN 1917

When the first Revenue Act enacted after our entry into World War I was received for administration on October 3, 1917, Commissioner Roper adopted a plan looking to a broad reorganization of the administrative machinery of the Bureau. The plan was outlined in his annual report for 1918, at pages 4–5, 31. This plan provided originally for the division of the subject matter of the Bureau according to six coordinate units, each under the supervision of a deputy commissioner or other officer of coordinate rank. One of these was the Legal Unit, headed by the Solicitor of Internal Revenue. Three other units were purely administrative, of which one directed the operations of the offices of collectors, and another directed the force of revenue agents and inspectors. The remaining two units had supervision over the technical subject matter of the Bureau, divided according to related subjects of taxation, as follows: First, income and profits taxes, and, second, all other taxes. (See

annual report, 1919, page 31.) The Commissioner's annual report for 1919 (at page 13) appears to be the first in which the unit supervising the income and profits taxes was described as the "Income Tax Unit."

In discussing a matter of audit jurisdiction over returns of income, it is important to agree on the definition of the word "audit." It is a chameleon-hued word. It is sometimes used interchangeably with the words "verification," "examination," and "investigation." It is sometimes used in an over-all sense as embracing all aspects involved in determining a correct tax liability. It is frequently modified by an adjective, viz, *preliminary* audit, *office* audit, and *field* audit. The Commissioner seemed to consider the "audit" as embracing also the verification and field investigation of returns when he said in his 1918 annual report (page 17):

> The audit and verification of income and excess profits returns includes work extending from proof of arithmetical additions and subtractions on the face of the returns to personal inspection, in many instances, of the books and records of the taxpayers. This work may be divided into two principal parts—(1) the office audit, which *includes* the checking by a staff of auditors in the Bureau of Internal Revenue at Washington of the return itself and an analysis, in conjunction with the return, of additional information secured by correspondence; and (2) the field audit, which *consists*, in selected cases, of the extension of the office audit to an inspection by an auditor in the field of the taxpayer's books and records of account.

In further discussion of this administrative reorganization in its relation with the "new auditing program," the 1918 annual report says (pages 20–21):

> Radical reorganization of the working force and the methods employed in the verification and audit of returns is being accomplished at the time this report is being written [the report was dated October 15, 1918] * * * Under this plan the great majority of returns will be speedily verified and audited and either closed by correspondence or sent out for field audit.
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> * * * * * * *
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> *The general plan contemplates direct control and management, by the Deputy Commissioner in charge of income taxes, of the entire auditing force of both the Bureau at Washington and the field service, so that desirable interchanges of personnel between the Bureau and the field forces may be effected. The field audit will be made a direct extension of the office audit. The eventual objective is to use the office audit organization as the point of entrance into the service of newly appointed auditors, so that they may be thoroughly trained and instructed under close personal supervision and subsequently graduated to the field audit organization.*

The problem confronting the Bureau at June 30, 1918, was to devise an administrative system by which an accumulation of approximately 4,000,000 income returns of individuals and corporations could be audited and any additional tax due could be discovered, assessed, and collected in the briefest possible time. (Annual report (1918), page 18.) The income and profits tax provisions of wartime Revenue Acts were drastically different from the orthodox forms of taxation with which our Revenue Service was then familiar. It was a staggering problem facing the Commissioner's office and is tersely expressed in his annual report (1918), at page 19:

> The returns filed under the War Revenue Act have multiplied by 10 the physical work involved in the verification and audit of the returns. The more difficult task, however, is that of dealing with the intricate questions that arise in administering the new law. In addition to knowledge of income and excess profits tax administrative procedure, those who deal with this subject matter must possess a higher order of accounting knowledge and ability. Essential war activities of the Government and of private enterprises have already so

drawn upon the field of available qualified accountants as to make it futile for this Bureau to rely for its supply upon existing sources of trained and experienced accountants. The plan of organizing and prosecuting the verification and audit of tax returns therefore embodies a scheme for the speedy and effective recruitment and training of a large corps of income and excess profits tax experts. The present force of officers and employees who are thoroughly experienced in the income tax procedure under the laws in operation prior to the Act of October 3, 1917, must be given further special and intensive training in order that they may be qualified for the verification and audit of returns involving the application of the excess profits tax law.

The experience of the Bureau has demonstrated that the verification and audit of the returns can be most economically and efficiently accomplished by dealing with the returns according to industrial classification. The plan that has been carefully tested and adopted for complete installation contemplates that all of the returns shall be first assembled according as they belong to certain classes of industries and businesses. Auditors can then be selected and developed as specialists in particular classes of enterprises. The work can be carried on more rapidly and efficiently but with necessary consistency and standardization of rulings that will be of inestimable aid in the equitable administration of the law.

By June 30, 1919, the Bureau was receiving the first returns filed under the Revenue Act of 1918. At this juncture the annual report for 1919, dated October 15, 1919, at pages 18–19, states:

The income tax auditing machinery of the Bureau is now occupied with those cases arising out of 1917 and 1918 returns—that is, the returns filed in 1918 and 1919 disclosing taxable income in the calendar years 1917 and 1918. *Returns of 1918 income, filed during the present taxable year, were held for some time in the offices of collectors in order that a preliminary audit might be made and apparent errors and omissions adjusted while there was convenient opportunity for any necessary conferences with the taxpayers. These returns are now being rapidly received and assembled at Washington for consideration in connection with claims and for final audit and verification.* This work at the Bureau will be regarded as current as soon as a condition is reached in which every return will be examined within three months after the date on which the fourth installment payment of tax is due. *This condition can not be attained until the present organization is expanded* in accordance with estimates now in course of preparation. The purpose of the efforts which are being made in this direction are to expedite the adjustment of tax cases and to relieve taxpayers of correspondence relating to tax liability in back years. *The progress of all this work is being accelerated by the gradual decentralization of audit work from Washington to the field offices. During the formative period under the war revenue legislation it was necessary to centralize the work at Washington in order that interpretation of the law, formulation of detailed regulations, and the development of a body of rulings might be worked out in a uniform and consistent manner. However, with the passing of this period and the development of a specially qualified personnel at Washington and in the field offices, it has been practicable to adopt measures looking to the extension of authority and discretion to field officers in the determination of tax liability.*

It is clear that the audit jurisdiction of collectors over the 1918 returns was a "*preliminary* audit" for the purpose of detecting "apparent errors and omissions." It is interesting to note that the idea of decentralization is beginning to germinate. The thought of making corrections "while there was convenient opportunity for any necessary conferences with the taxpayers," when once entertained is hard to dismiss.

In the annual report for 1920, Commissioner Williams discusses the relative merits of centralization and decentralization, as follows (pages 9–10):

EVENTUAL DECENTRALIZATION OF OPERATIONS

The principle of centralized operation, which was essential in the early stages of organization in order to develop uniformity of methods and deci-

sions, has been followed without losing sight of the desirability of conforming as rapidly as possible to the eventual policy of decentralization by transfer of the audit of returns to collectors' offices. Obviously, the ideal time for the correct determination of tax liability is the date the return is made and the ideal place is the business headquarters of the taxpayer.

The first officers of the Bureau to receive the returns filed by taxpayers are the collectors and their deputies. It is to these local officers that the citizens naturally apply for advice and assistance in the preparation of returns. Although collectors are responsible for the transaction of internal revenue business of all kinds, it has been possible in their offices, as well as in the Bureau, to provide for considerable specialization on income and profits taxes. Employees have been carefully selected and trained for this important work, so that the best possible service might be rendered to the community.

Beginning with the returns for the calendar year 1918, collectors were authorized to conduct a preliminary audit of individual returns of [taxable] income not exceeding $5,000. About 3,500,000 (or more than 80 per cent of the total number) income and profits tax returns for the calendar year 1918 were examined in the offices of the 64 collectors. Errors discovered by the deputy collectors assigned to this work were adjusted in many instances by personal conference with the taxpayers, always with less delay and correspondence than when similar adjustments are made in Washington. *The returns for 1919 were handled in a similar manner*, and it is believed that the result will be even more satisfactory, because the deputies have had the advantage of the previous year's experience and of considerable subsequent training and study.

Although this audit in the offices of collectors must later be *reviewed by the Income Tax Unit at Washington*, the increasing proficiency of the deputy collectors will eventually reduce this review to a mere matter of verification, and readjustments made in Washington will be greatly reduced in number.

The form of decentralization above discussed was the grant of permission to perform audit operations in the field, subject to review by the Bureau in Washington. Later the conference function was delegated to the internal revenue agents in charge, but their determinations remain subject to review by the Income Tax Unit in Washington. (See Annual Report, 1924, pages 8-9.)

SUMMARY

The historical development of the Audit is unmistakably clear. The 1909 Act forbade anyone other than a regularly appointed revenue agent specially designated by the Commissioner for that purpose from examining a taxpayer's books and papers. The income tax required a different type of training than previous modes of taxation, with particular reference to a broad accounting knowledge. The war and excess profits taxes of World War I accentuated these qualifications. The interpretation of the new law and the development of a trained force of auditors and field investigators required a strong centralized control in the beginning. The standards and protection of the civil service appeared vital at the time. The sixty-odd collectors did their own appointing and dismissing of deputy collectors, without regard to civil service rules. The Commissioner of Internal Revenue was one appointing authority around whom uniform employment practices could be maintained. The convenience of a centralized training ground and free interchange of personnel between the field and the departmental forces of the same operating unit seemed to clinch the matter.

The field investigation, or the inspection by an auditor in the field of the taxpayer's books and records of account, was regarded as simply an "extension of the office audit." (Even to-day a great many office audits are as thorough as the average investigation of

books and records at the taxpayer's place of business.) The office audit work was assigned to the Income Tax Unit in Washington and was used as "the point of entrance" into the Service of newly appointed auditors, where they were trained and instructed under "close personal supervision" and subsequently graduated to the field audit organization. Regardless of later declarations of intent to decentralize all audit work into the collectors' offices, the trained audit force was developed in and by the office of the Commissioner in Washington. As greater authority was extended to the field, the employees of the Income Tax Unit were themselves decentralized to carry on as a part of the Unit, and the audit work in the field remained under the supervision of the Income Tax Unit. That which the Commissioner acquired from the assessors by the Act of December 24, 1872, has, together with the hearing of appeals, been returned to the field under his own banner. (See annual report, 1924, pages 8–9; Com. Mim., Coll. No. 4960, R. A. No. 1014, T. S. No. 57, dated September 14, 1939; Com. Mim., Coll. No. 4792, revised, R. A. No. 911, revised, dated January 4, 1939; Com. Mim., R. A. No. 899, revised, dated January 26, 1939.)

THE COLLECTORS' AUDIT JURISDICTION

The job was too great for the internal revenue agents and the Washington auditors. The collectors were called upon to assist in the audit. They have no authority to audit returns in their own right. Any such authority exercised by collectors has been delegated to them by the Commissioner, and can be withdrawn by him. As previously cautioned, the word "audit" is a variable quantity. When used as regards the audit jurisdiction of collectors, the word will be particularized.

The first delegation to collectors of authority to audit individual income tax returns is in I. T. Mimeograph 1755, dated January 30, 1918, which contains the following statement:

> All returns, *except Forms 1040–A*, should be forwarded to this office with the lists on which they appear. Forms 1040–A will be retained in collectors' offices arranged according to lists and sections of lists on which they appear, for detailed audit after July 1, instructions concerning which will be issued before that time.

From the date of the above mimeograph, it will be seen that the first returns assigned to collectors for audit were Forms 1040–A for the year 1917. The instructions referred to in the quoted paragraph were subsequently issued without any mimeograph number designation. These instructions contemplated little more than a mathematical verification of the returns. (See annual report (1919), pages 18–19, above quoted.)

The next significant reference to the audit of returns by collectors is contained in SOC:Mim. 2440, dated March 17, 1920, which instructs collectors to "assign a sufficient number of experienced income tax deputies to the work of auditing and making transcripts of 1040–A returns for 1919."

The first issue of Part II of the Internal Revenue Manual, bearing the date 1920 on the fly sheet, contains one paragraph relating to the auditing of 1040–A returns. Section 736 thereof is quoted as follows:

The procedure as to 1040–A returns requires that such returns be audited before listing. During the audit taxpayers will not be corresponded with regarding doubtful points. The audit will be made from the information furnished on the return, and assessment made accordingly. The correspondence section will advise all taxpayers after the audit has been made whenever there has been an increase or decrease in tax. In case an error has been made because of insufficient information, the amount erroneously assessed may be abated. This procedure is necessary in order not to delay the audit. However, this does not mean that taxpayers can not be corresponded with after the audit or that a field investigation should not be made on questionable returns. It will be necessary for the person making the audit to use his judgment as to the tax to be assessed. Remarks as to action recommended either through correspondence or field investigations may be made in the notes column of the record of audit.

Here "audit" unquestionably means a close inspection of the return and its schedules to detect errors and omissions appearing on the face.

All of the early instructions on the audit of returns by collectors contemplated that the audit would be performed between the time of the deposit of the first payment and the time of listing. However, the audit was not performed prior to listing because it was necessary to get the returns listed in order to issue the notices for the second installment of tax on part-paid returns which was due on June 15.

A&C Mim., Coll. No. 3269, dated December 26, 1924, addressed only to "Collectors of Internal Revenue" and signed by Acting Commissioner C. R. Nash, extended the collectors' audit jurisdiction. By this mimeograph, Form 1040 returns "which show a gross income of $25,000 or less, will, in addition to Forms 1040–A, be retained in collectors' offices for audit." This was effective January 1, 1925, and lasted for two years. It was revoked by A&C Mim., Coll. No. 3493, R. A. No. 398, dated December 18, 1926, signed by Commissioner D. H. Blair. That mimeograph, effective January 1, 1927, withdrew all 1040 returns from the collectors and left them with the 1040–A income returns only.

The July, 1927, revision of Part II of the Internal Revenue Manual contains under Title VII extended provisions for the audit of returns in collectors' offices. The opening paragraph of section 625 provides:

There shall be permanently established in the income tax division of the office of each collector of internal revenue *an audit section.*

The paragraphs that follow give in considerable detail the instructions for the audit of returns which in substance are the instructions now being followed except as they have been modified by the enactment of the Current Tax Payment Act. A&C Mim., Coll. No. 6017, dated May 23, 1946, contains the most recent instructions relating to the audit of returns in collectors' offices with the exception of A&C Mim., Coll. No. 6081, dated November 1, 1946, which prescribes the use of Form 885.

Evidently the jurisdictional question would not remain quiet. Com. Mim., Coll. No. 3704, R. A. No. 489, dated February 8, 1929, is such an interesting document on the subject that it is here quoted in full:

PROCEDURE FOR THE AUDITING OF 1040 RETURNS

To Collectors of Internal Revenue and Internal Revenue Agents in Charge:

We have given very careful consideration to the procedure to be followed in the audit of the 1040 returns. The question has been considered from every angle, and it is believed that we have arrived at the best solution.

Some have felt that all of the 1040 returns should be audited by the revenue agents, and others that they should be audited by the deputy collectors. Notwithstanding this difference of opinion, I am sure that all will agree that *this is a matter which this office alone can finally determine*, and upon our assurance that we have given it most careful consideration you will, of course, accept our decision in the proper spirit and bend every effort toward doing the work quickly and well.

The plan which we have adopted and which will be carried out is as follows:

The preliminary examination as to the mathematical accuracy of the returns shall be made in the same manner as has been done in previous years and the returns forwarded to the Bureau for classification. Instead of having the returns classified in the field, they will be classified in the Income Tax Unit of the Bureau at Washington, as follows:

(*a*) The 1040 returns that show income principally from salaries and wages, and such other returns as appear to have the correct income reported therein.

(*b*) The 1040 returns involving gross income of $25,000 or less, with the exception of those returns showing income from natural resources and those reporting income from a partnership or fiduciary.

(*c*) The 1040 returns, the gross income of which is in excess of $25,000, or returns involving incomes from natural resources, partnerships and fiduciaries.

Those returns under item (*a*) which are to be audited and retained in the Bureau will not be sent to the field unless an information return subsequently received shows that the taxpayer has not reported all his income for the year involved, or a collector or revenue agent in charge for good reason requests said returns. If such information is received or such request is made the return will be forwarded for investigation to the appropriate collector or revenue agent in charge.

The returns under item (*b*) will be forwarded to the collector of internal revenue for audit, unless for some good reason it appears best to the officials of the Bureau to send such returns to the revenue agent in charge.

The returns under item (*c*) will be forwarded to the revenue agent in charge for audit, unless it is apparent to the Bureau officials that some of such returns can better be audited by the collector or by the Income Tax Unit.

The 1040–A returns will be audited by the collectors and their deputies in all districts.

The audit of income tax returns must be kept current and it is essential that all units of the Bureau cooperate to bring about the desired results.

D. H. BLAIR, *Commissioner.*

DELEGATIONS BY THE COMMISSIONER OF INVESTIGATIVE AND AUDIT JURISDICTION (1947)

It is not here intended to set forth *how* the returns are audited, but under whose *authority* they are audited, and by *whom*. An extensive literature describes in detail the rules and principles guiding the making of audits.

As above explained, the authority of investigation and audit over all income returns, and the determination of the correct tax liability, are placed by statute exclusively in the Commissioner. He operates under the direction of the Secretary of the Treasury. Both he and his office, or Bureau of Internal Revenue, are in the Department of the Treasury. (Sections 3900 and 3901, Internal Revenue Code.) The Commissioner has delegated a part of his functions to the collectors, the precise boundaries being generally prescribed at this time (1947) by Com. Mimeograph, Coll. No. 6091, dated December 16, 1946, as follows:

(*a*) The duty of making "a preliminary examination (mathematical verification)" of all returns on Forms 1120 (corporation),

all taxable returns on Form 1041 (fiduciary), and all so-called Bureau returns on Form 1040 (individual), prior to the time the returns are recorded or listed for assessment, refund, or credit.

(*b*) The investigation and audit (including the authority in a limited class of cases to mail a statutory notice of deficiency under section 272, Internal Revenue Code) of all Forms 1040 where the adjusted gross income is less than $7,000 *and* the total receipts from business or profession is less than $25,000.

(*c*) The investigation and audit of all so-called W–2 returns (including the authority in a limited class of cases to mail a statutory notice of deficiency under section 272, Internal Revenue Code).

(*d*) The authority, in connection with income returns retained for audit in collectors' offices, to make refunds not in excess of $1,000. (Com. Mim., Coll. No. 5701, dated June 16, 1944; section 3770(a), Internal Revenue Code.)

(*e*) By Com. Mimeograph, Coll. No. 6176, R. A. No. 1606, dated August 14, 1947, the collectors' audit jurisdiction over individual returns on Form 1040 was extended to include all such returns which were classified by the internal revenue agents in charge as worthy of field examination or office audit but which, for any reason, their offices will not be able to investigate within the prescribed time. Such returns will be promptly transferred to the appropriate collector for such examination as he may deem warranted.

Save only as to the jurisdiction thus conferred upon the collectors, the Commissioner has delegated the investigative and audit functions of all other income tax returns to the Income Tax Unit (including, subject to the appellate jurisdiction of the Technical Staff, the authority to mail statutory notices of deficiency under section 272, Internal Revenue Code), with the investigation of fraudulent aspects of violations being assigned to the Intelligence Unit. The Technical Staff has no jurisdiction over cases involving criminal prosecution. The returns of income specified in this paragraph are called "Bureau returns" and, with certain exceptions, must be forwarded by the collectors to the Clearing Division, Income Tax Unit, Washington, D. C. The collectors have no investigative or audit jurisdiction over corporate income returns. The returns falling within paragraphs (*b*) and (*c*), supra, are retained by the collectors and not forwarded to Washington. They are commonly referred to as "Collectors' returns."

The terminology of "Collectors' returns" and "Bureau returns" is unfortunate. It implies an antagonism between the two, whereas we are all of the Bureau. The differentiation, although descriptively convenient, is an anachronism handed down from a time when the collectors and their appointees constituted practically the entire field force of the Revenue Service, and the Commissioner and his appointees constituted practically the entire departmental force of the Revenue Service. Since that time most of the Commissioner's men have gone to the field, and all personnel under the collectors are Bureau employees whose jobs have civil service status.

The investigation and audit of estate and gift tax returns is, at the direction of the Commissioner, accomplished under the management of the field forces of the Income Tax Unit, but subject to the technical supervision of the Miscellaneous Tax Unit. The fraudu-

lent aspects are entrusted to the Intelligence Unit. Such activities are also subject to the appellate jurisdiction of the Technical Staff.

The investigation and audit of miscellaneous taxes is divided between the collectors and the Miscellaneous Tax Unit, in accordance with letters of instruction. The Technical Staff has no appellate jurisdiction over miscellaneous taxes in general. A letter of instruction issued by the Miscellaneous Tax Unit on April 2, 1947, describes the situation as follows:

> (2) Except as they may have otherwise been specially directed by the Bureau, internal revenue agents in charge (Miscellaneous Tax) and Internal Revenue Agents (Miscellaneous Tax) will, in general, confine their investigative work to (*a*) the manufacturers' excise taxes imposed under Chapter 29 of the Internal Revenue Code; (*b*) the documentary stamp taxes imposed under Chapters 11 and 31 of the Code; (*c*) the communications and transportation taxes imposed under Code Chapter 30; and (*d*) the retailers' excise taxes imposed under Code Chapters 9A and 19 in cases involving chain stores operating in more than one collection district.
>
> While, except as special letter instructions may have been issued as respects other miscellaneous taxes, it is intended that the investigative jurisdiction of Internal Revenue Agents (Miscellaneous Tax) should be limited to the taxes described in paragraph 2, above, the jurisdiction is not exclusive since it must be appreciated that collectors of internal revenue will, in the discharge of their general statutory responsibility, also have occasion to conduct investigations with respect to such taxes. (See paragraph 3 of A&C Mimeograph, Coll. No. 3972.) In harmony with the general theory which prompted the establishment of the Miscellaneous Tax field force, however, it is not anticipated that collectors' offices will ordinarily be in a position to conduct the extensive audits which the larger and more difficult classes of cases arising in connection with these taxes frequently occasion.

APPELLATE JURISDICTION WITHIN THE BUREAU

In respect of income, profits, estate, and gift taxation, experience has taught that it is advisable, if not administratively necessary, to provide facilities for an appeal within the Bureau to an organization not under the supervision of the Unit which initiated the imputed liability. The appellate agency of the Bureau has always functioned under the immediate supervision of the Commissioner. It is presently known as the Technical Staff and operates under a decentralized system with published rules of procedure. (See Federal Register, volume 11, No. 177, dated September 11, 1946, Part II, sections 600.53 and 601.3, pages 177A–30, 177A–42.) As regards all issues arising under section 722, Internal Revenue Code, the Excess Profits Tax Council constitutes the appellate agency of the Bureau. (See Federal Register, ibid., sections 600.12 and 600.56, pages 177A–27, 177A–33.) With the exception of the old Advisory Tax Board, the appellate agency within the Bureau has been created by departmental action and not by statute.

The "Advisory Tax Board" was created in the Bureau of Internal Revenue, in the District of Columbia, by section 1301(d) of the Revenue Act of 1918, approved February 24, 1919. Its members were "appointed by the Commissioner with the approval of the Secretary." Under the statute, it was to be composed of not to exceed six members, and was to have a maximum life of two years; but it could cease to exist "at such earlier time as the Commissioner with the approval of the Secretary may designate."

The procedure before the Advisory Tax Board is prescribed in the original Regulations 45, as articles 1701 and 1702 of Treasury De-

cision 2831, signed by Commissioner Daniel C. Roper and approved on April 16, 1919, by Carter Glass, Secretary of the Treasury. Article 1701 provides in part as follows:

> SUBMISSION OF QUESTIONS TO ADVISORY TAX BOARD.—Questions relating to the interpretation or administration of the income tax and war profits and excess profits tax laws may be submitted to the Advisory Tax Board by the Commissioner on his own initiative or at the request of any taxpayer directly interested for the purpose of obtaining the recommendation of the Board thereon. When a final conclusion has been reached by the Income Tax Unit of the Internal Revenue Bureau as to the disposition of a matter, any taxpayer directly interested therein may request the Commissioner to submit such matter to the Board.

The foregoing regulation was not as emphatic as paragraph (2) of section 1301(d) of the Act, which made it mandatory upon the Commissioner, at the taxpayer's request, to submit to the Board "any question relating to the interpretation or administration of the income, war-profits or excess profits tax laws." The Board's findings and recommendations were reported to the Commissioner.

The Advisory Tax Board was short-lived. Its recommendations and memoranda, under the symbols T. B. R. and T. B. M., appear in the Cumulative Bulletin of the Bureau for the year 1919. It was superseded by the Committee on Appeals and Review, which was organized in the latter part of 1919. The recommendations and memoranda of the Committee on Appeals and Review, bearing the symbols A. R. R. and A. R. M., make their appearance in the last six or seven issues of the Internal Revenue Bulletin in 1919.

In the Internal Revenue Bulletin for the forty-third week of the year 1920 appears O. D. 709 (C. B. 3, 370), entitled "A Rule for Procedure on Appeals from the Income Tax Unit." Significantly, the general heading under which O. D. 709 was published in the Cumulative Bulletin is as follows: "Section 1301, Article 1702: Procedure before Advisory Tax Board. (Committee on Appeals and Review.)"

By section 250(d), Revenue Act of 1921, it was provided that before any additional assessment is made, the taxpayer shall be notified and given a period of not less than 30 days in which to file an appeal and show cause why the additional tax should not be paid. Opportunity for hearing was given and a final decision was to be made as quickly as practicable. The general procedure under the 1921 Act is set forth in article 1006, Regulations 62, as amended by Treasury Decision 3492 (C. B. II–1, 170). At this time, David H. Blair was Commissioner, and Andrew W. Mellon, Secretary of the Treasury. The Committee on Appeals and Review was, in general, the agency designated by the Commissioner to hear such appeals where the taxpayer and the Income Tax Unit were unable to reach an agreement. Special agencies in the office of the Solicitor of Internal Revenue were formed to handle specific cases or to relieve the congestion before the Committee. In January, 1924, O. D. 709, heretofore mentioned, was revoked and superseded by a more elaborate "Rules of Procedure before Committee on Appeals and Review," published as A. R. M. 219 (C. B. III–1, 319). The findings and recommendations of the Committee were transmitted to the Commissioner for his approval or disapproval.

A brilliant development of administrative procedure in tax controversies was inaugurated by the Revenue Act of 1924. By Title

IX of that Act, the Board of Tax Appeals was created. Its members are appointed by the President and confirmed by the Senate. The Board is an independent agency in the Executive branch of the Government. It is not a part either of the Bureau of Internal Revenue or of the Treasury Department. The Board grew to full stature under the Revenue Act of 1926, when its decisions were made final, subject to review only by the appellate courts and the Supreme Court. By the 1942 Revenue Act, its name was changed to The Tax Court of the United States.

Upon the establishment of the Board, the view prevailed that the appeals agency within the Bureau of Internal Revenue was no longer needed. The Committee on Appeals and Review was accordingly abolished by Treasury Decision 3616 (C. B. III–2, 275, 278), approved July 16, 1924, which rescinded article 1006 of Regulations 62 and prescribed a new appeals and conference procedure under the 1924 Act. However sound this action may have appeared at the time, the history of revenue administration for the ensuing three years demonstrated with conclusive force the necessity of an appellate body within the Bureau, separate from any other revenue office, and reporting direct to the Commissioner. The number of petitions pending before the Board of Tax Appeals increased steadily, and by June 30, 1927, had reached the then staggering total of 18,481 dockets, with no improvement in sight. The same Commissioner of Internal Revenue who had abolished the Committee on Appeals and Review modified his action when by Mimeograph 3558, dated July 28, 1927 (C. B. VI–2, 403–404), the Special Advisory Committee was "established in the office of the Commissioner," effective as of August 1, 1927. The Special Advisory Committee operated for over six years, and until November 16, 1933, when it was abolished and succeeded by the Technical Staff of the office of the Commissioner. The Staff was given greater jurisdiction and its senior technical advisors, in the exercise of their settlement authority, functioned under direct responsibility to the Commissioner.

Prior to decentralization, the Technical Staff operated almost entirely in and from the Washington office, although field representatives were always maintained in the larger cities. Joint groups of attorneys and Staff men traveling in the field represented the Commissioner at the circuit calendars of the Board of Tax Appeals (now called The Tax Court of the United States). On March 1, 1938, an office was opened in the Subway Terminal Building, Los Angeles, Calif., known as the Los Angeles Division of the Technical Staff. This action was based upon an exhaustive study of Bureau operations over a long period of time. It was avowedly an experiment, carefully worked out under the guidance of Secretary Morgenthau and Commissioner Helvering, to test under practical conditions a decentralized method of handling tax controversies. The jurisdiction was limited to income and profits taxes, excluding fraud cases, and provided for a reference of the controversy to the Staff Division either before or after the issuance of the statutory notice of deficiency. For added protection in the field handling of Board dockets, the plan granted exclusive settlement authority to the Staff division head, subject, however, to concurrence by counsel. The plan was broadened to cover the estate and gift tax field, as well as the ad valorem fraud penalty, and was gradually extended to the entire

United States, Alaska, and the Hawaiian Islands. The first regular Staff field division was the Pacific Division, estabiished July 1, 1938. Thereafter the remaining field divisions were formed, numbering 10 in all, the last or Atlantic Division, being organized May 1, 1939.

Contemporaneously with the establishment of the field divisions of the Technical Staff, there was a revamping of the procedure in the Income Tax Unit, both in the field and in Washington. The internal revenue agents in charge were authorized to determine tax liabilities and mail statutory notices of deficiency. The right of appeal from a decision of an internal revenue agent in charge to the former Conference Division, Income Tax Unit, in Washington, was discontinued, and the personnel of the Conference Division were largely merged with the Technical Staff. The appellate conference in prestatutory notice status was thereafter granted in the field before the appropriate local office of the Staff.

The stated purpose of the decentralized procedure of the Technical Staff is "to provide one, single, unified agency, with office facilities at or near the taxpayers' residences or places of business, to exercise on the ground, for the Commissioner, all the authority which the Department or any of its branches may have under the law in the review of protested tax determinations made by the internal revenue agents in charge, in the settlement of contested cases, and in the defense of such cases, when necessary, before the Board of Tax Appeals." In the Technical Staff were first developed (*a*) the policy of making final closings in the field prior to the issuance of a statutory notice of deficiency, and not subject to reopening on post review in Washington: and (*b*) where action favorable to the taxpayer and recommended by the operating conferee is disapproved in whole or in part by a reviewing officer on the Staff, the taxpayer shall be so advised and, upon written request, shall be accorded a rehearing before such reviewing officer. This assures action by the Staff in conformity with the views of an officer or employee who actually heard the case.

There have been many interesting revenue measures exercising the constitutional power to tax delegated to the Federal Government. The taxes on undistributed profits, personal holding companies, and unjust enrichment illustrate the unusual forms that taxation may take under certain conditions. The withholding system and the provisions respecting pension trusts illustrate the novel administrative burdens that are sometimes imposed upon the public as well as the Bureau. However, the statutory powers and duties of the office of the Commissioner, laboriously hammered out the hard way, by experience, have appeared suitable to enforce compliance in general with the law and provide the machinery for fair administration. From 1940 to 1947 the personnel of the Bureau was more than doubled, such increase being in modest relation to the increase in workload and revenue collections. The broadening of the field of taxation and the difficulties during that period of securing or retaining trained employees have presented technical and administrative problems which constantly engage the attention of the supervisory officers. The Commissioner's office was not built in a day.

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