

losses paid or incurred, or paid or accrued within the taxable year. 7 B. T. A. 737.

Installment payments received and refunded in the same year should be excluded. Id.

Taxpayer might deduct as bad debts, in 1918, 1919, and 1920, only such portion of 1917 accounts ascertained to be worthless and charged off in those years as represented the unrecovered cost of the merchandise. Id.

Proper method of accounting for losses sustained through damage and use to repossessed merchandise determined. Id.

**45. Amount of income.**—Taxpayer may return as income proportion of payments in tax year which total profits realized or to be realized bear to total contract price. 4 B. T. A. 1262; 5 B. T. A. 905; 6 B. T. A. 110.

Reduction of purchase price, by agreement subsequent to year of sale, can have no bearing on computation of income returnable in year of sale. 5 B. T. A. 905. Amount determined. 7 B. T. A. 109.

Proper method of computing annual percentage of profit and proportion of

the installment payments, to be returned as income, determined. 7 B. T. A. 737.

Income computed upon installment sales basis. 12 B. T. A. 1024.

On installment sale of mortgaged realty amount of mortgage must be deducted in computing percentage of profit. Article 44(2), Regulations 69. 12 B. T. A. 1358.

**46. Change to installment basis.**—Where taxpayer reported income on accrual basis in accordance with its bookkeeping method, refusal of Commissioner to accept amended return reporting income on installment basis approved, in absence of evidence of necessary facts. 5 B. T. A. 652.

Taxpayer who changes from the accrual method must return proper proportion of payments, received in tax year for sales in years prior to the change though entire profits from such sales, returned and taxed in years in which such sales were effected. Commissioner's Regulations approved. 7 B. T. A. 737, 1327; 9 B. T. A. 815.

See, as to effect of section 2705 of this title, 12 B. T. A. 863.

**§ 953a. Retroactive application of section 953; credits and refunds.** The provisions of subdivision (d) of section 953 of this title shall be retroactively applied in computing income under the provisions of the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or any of such Acts as amended. Any tax that has been paid under such Acts prior to February 26, 1926, if in excess of the tax imposed by such acts as retroactively modified by this section, shall, subject to the statutory period of limitations properly applicable thereto, be credited or refunded to the taxpayer as provided in section 1065 of this title. (Feb. 26, 1926, c. 27, § 1208, 44 Stat. 130.)

#### Historical Note

This section constitutes § 1208 of Act Feb. 26, 1926, c. 27, 44 Stat. 130. See note to § 1a.

#### Notes of Decisions

**1. Operation and effect.**—A person who regularly sells or otherwise disposes of personal property on the installment plan is entitled, under this section in computing income under the Revenue Acts of 1916, 1917, 1918, 1921, and 1924, to return the income from installment sales by the use of the installment method as prescribed by subdivision (d) of section 953 of this title. 7 B. T. A. 737.

**§ 954. Gross income; what included; what not included.** For the purposes of this chapter, except as otherwise provided in section 985 —

(a) The term "gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, voca-

tions, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 953, any such amounts are to be properly accounted for as of a different period.

(b) The term "gross income" does not include the following items, which shall be exempt from taxation under this title:

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

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

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

(4) Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) securities issued under the provisions of chapters 7 and 8 of Title 12 (the Federal Farm Loan Act), or under the provisions of such Act as amended; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations or securities enumerated in clause (A), (B), or (C) shall, in the return required by this chapter, submit a statement showing the number and amount of such obligations and securities owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit), the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt to the taxpayer from income taxes;

(5) The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in

banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States;

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

(7) Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the Government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility—

(A) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such public utility, prior to any division of such proceeds between the person and the State, Territory, political subdivision, or the District of Columbia, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then a tax upon the net income from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State, Territory, political subdivision, or the District of Columbia (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary), an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, bears to the amount of the net income from the operation of such public utility for such taxable year.

(B) If by the terms of such contract no part of the proceeds from the operation of the public utility for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then the tax upon the net income of such person from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter;

(8) The income of a nonresident alien or foreign corporation which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States;

(9) Amounts received as compensation, family allotments and allowances under the provisions of the War Risk Insurance and the Vocational Rehabilitation Acts or chapter 10, of Title 38 (the World War Veterans' Act, 1924), or as pensions from the United States for

service of the beneficiary or another in the military or naval forces of the United States in time of war, or as a State pension for services rendered by the beneficiary or another for which the State is paying a pension;

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

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

(12) The receipts of shipowners' mutual protection and indemnity associations, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax upon their net income from interest, dividends and rents;

(13) In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under sections 141 to 162 of Title 15 (the China Trade Act, 1922), if, at the time of such distribution, he is a resident of China and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

(14) In the case of an individual citizen of the United States, a bona fide nonresident of the United States for more than six months during the taxable year, amounts received from sources without the United States if such amounts constitute earned income as defined in section 940 of this title; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(c) In the case of a nonresident alien individual, gross income means only the gross income from sources within the United States, determined under the provisions of section 958. (June 2, 1924, 4.01 p. m., c. 234, § 213, 43 Stat. 267; Feb. 26, 1925, c. 345, § 12, 43 Stat. 997; Feb. 26, 1926, c. 27, § 213, 44 Stat. 23.)

#### Historical Note

This is from section 213 of the Revenue Act of 1926, cited to the text, which re-enacted with changes in paragraphs (1), (2), (3), and (10) of subd. (b), and with the addition of a new paragraph [paragraph (14)], the provisions of section 213 of the Revenue Act of 1924, as amended by Act Feb. 26, 1925, c. 345, § 12, cited to the text. Section 213 of the Act of 1924 was repealed by § 1200 of the Act of 1926, 44 Stat. 125, to take effect Jan. 1, 1925.

By § 286 of said Act of 1926 (44 Stat. 69), § 213 was made to take effect as of Jan. 1, 1925.

See note to § 1a.

In the Act of 1924, paragraphs (1) and (2) of subd. (b) read as follows:

"(1) The proceeds of life insurance

policies paid upon the death of the insured;

"(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract."

The only changes by the Act of 1926 in paragraphs (3) and (10) consisted of the substitution of "inheritance" for "descent" in paragraph (3) and the omission of the words "before January 1, 1927" which followed "the amount received by an individual" in paragraph (10).

Provisions largely similar to those of the Act of 1924 were contained in section

213 of the Revenue Act of 1921, as amended by Act Sept. 19, 1922, c. 346, § 26. Provisions somewhat similar, but not containing all of the exemptions contained in the later acts, and containing an additional exemption of compensation of persons in the military or naval forces during the war, were contained in section 213 of the Revenue Act of 1918 (Act Feb. 24, 1919).

Provisions specifying matters included in "net income" were contained in Act Oct. 3, 1913, c. 16, § II, B, and Act Sept.

8, 1916, c. 463, § 2 (a), both of which seem to have used "net income" to designate income called gross income in later acts.

Various exemptions were contained in Act Oct. 3, 1913, c. 16, § II, subds. B, and G, 38 Stat. 167, 172, Act Sept. 8, 1916, c. 463, § 4, 39 Stat. 758, as amended by Act Oct. 3, 1917, c. 93, § 1200, 40 Stat. 329, Act Sept. 8, 1916, c. 463, § 11(b), 39 Stat. 767, and § 30, as amended by Act Oct. 3, 1917, c. 63, § 1211, 40 Stat. 336.

All of these provisions have been repealed.

**Cross-References**

Gross income in the case of corporations, see section 985 of this title; in the case of insurance companies, see sections 1003 and 1006 of this title.

For corresponding provisions of the Revenue Act of 1928, see section 2022 of this title.

**Notes of Decisions**

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**I. VALIDITY AND OPERATION IN GENERAL**

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

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

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

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

2. **Validity.**—The corresponding section of the Revenue Act of 1918 so far as it imposed a tax on the income of judges of the courts of the United States, including their salaries, was held to violate Const. art. 3, § 1, providing that the compensation of judges shall not be diminished during their continuance in office, despite the fact that the income of other persons was likewise taxed. *Evans v. Gore* (Ky. 1920) 40 S. Ct. 550, 253 U. S. 245, 64 L. Ed. 887, 11 A. L. R. 519, reversing (D. C. Ky. 1919) 262 F. 550. *Contra* (1919) 31 Op. Atty. Gen. 475.

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

As holding the salaries of judges appointed subsequent to the enactment of the Act subject to the income tax see (1920) 32 Op. Atty. Gen. 248.

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

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

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

**4. Income in general.**—The word "income" must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Federal Corporation Excise Tax Act (repealed). *Merchants' Loan, etc., Co. v. Smietanka* (Ill. 1921) 255 U. S. 509, 41 S. Ct. 386, 65 L. Ed. 751, 15 A. L. R. 1305; *Bowers v. Kerbaugh-Empire Co.* (N. Y. 1926) 46 S. Ct. 449, 271 U. S. 170, 70 L. Ed. 886.

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

"Income" is gain derived from capital, from labor, or from both combined, including profit gained through conversion or sale of capital. *Bowers v. Kerbaugh-Empire Co.* (N. Y. 1926) 46 S. Ct. 449, 271 U. S. 170, 70 L. Ed. 886.

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

Income Tax Act Sept. 8, 1916, § 2 (repealed) cannot be held to define the income taxable under Income Tax Act Oct. 3, 1913. *Id.*

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

What is taxable is the gain, profit or income derived from the sale or dealing in property, whether real or personal. The tax is to be levied on nothing else except gains, profits, and income, and upon them only when actually realized in money or in money's worth, and in de-

termining what is included therein the courts will look through form to substance. *Safe Deposit, etc., Co. v. Miles* (D. C. Md. 1921) 273 F. 822, affirmed (1922) 42 S. Ct. 483, 259 U. S. 247, 66 L. Ed. 923.

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

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

"Gains and profits," means that which recipient has for his own use and benefit. *Id.*

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

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

Provision requiring contractor to maintain work in good repair for periods of 3 to 10 years is a collateral undertaking based upon a contingency. *Id.*

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

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

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

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

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

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

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

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

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

Entries in books at variance with actu-

al facts not basis for determination of income. 12 B. T. A. 1058.

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

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

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

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

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

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

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

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

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

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

Dividends credited to majority stockholder on books of corporation held income there being no evidence that he might not have withdrawn the amount. 12 B. T. A. 31.

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

**8. Non-resident aliens.**—See, also, notes to section 958 of this title.

British subject, managing shipping company, but intending eventually to return to England, held "resident alien," within law. *Bowring v. Bowers* (C. C. A. N. Y. 1928) 24 F.(2d) 918, certiorari denied (1928) 48 S. Ct. 603, 72 L. Ed. —.

Income received from sources without United States by nonresident alien individuals is not taxable, even though such individuals become resident aliens subsequent to receipt of income and prior to close of tax year. 6 B. T. A. 1005.

**9. Income under former law.**—*Pacific Ins. Co. v. Soule* (Cal. 1868) 74 U. S. (7 Wall.) 433, 19 L. Ed. 95; *Gray v. Darlington* (Pa. 1872) 82 U. S. (15 Wall.) 63, 21 L. Ed. 45; *Stockdale v. Atlantic Ins. Co.* (La. 1873) 87 U. S. (20 Wall.) 323, 22 L. Ed. 348, reversing (C. C. 1872) Fed. Cas. No. 6,662; *Schuylkill Nav. Co. v. Elliott* (C. C. Pa. 1875) Fed. Cas. No. 12-497; *Lake Shore & M. S. R. Co. v. Rose* (Ohio, 1877) 95 U. S. (5 Otto) 78, 24 L. Ed. 376; *Western Union R. Co. v. U. S.* (Wis. 1879) 101 U. S. 543, 25 L. Ed. 1068; *Knowlton v. Moore* (N. Y. 1900) 20 S. Ct. 747, 752, 178 U. S. 41, 44 L. Ed. 909; *Magee v. Denton* (C. C. N. Y. 1903) Fed. Cas. No. 8,943; *U. S. v. Schilling* (C. C. N. Y. 1876) Fed. Cas. No. 16,228; *U. S. v. Frost* (D. C. Ill. 1869) Fed. Cas. No. 15,172; *U. S. v. Smith* (D. C. Or. 1870) Fed. Cas. No. 16,341.

## II. ITEMS INCLUDED IN GROSS INCOME

**21. In general.**—The following items have been held to constitute taxable income: Gains from business in violation of prohibition law. *U. S. v. Sullivan* (S. C. 1927) 47 S. Ct. 607, 274 U. S. 259, 71 L. Ed. 1037, 51 A. L. R. 1020; Insurance received to cover loss by fire where loss deducted from prior return. *Cooper v. U. S.* (C. C. A. Iowa, 1925) 9 F.(2d) 216; Appreciation in value of property given to taxpayer. *Rice v. Eisner* (C. C. A. N. Y. 1926) 16 F.(2d) 358, certiorari denied (1927) 47 S. Ct. 477, 273 U. S. 764, 71 L. Ed. 880; Profits from payment of installment notes for price of mining property at maturity. *Kosmerl v. Commissioner of Internal Revenue* (C. C. A. 1928) 25 F.(2d) 87; Interest in partnership received by stockholders on dissolution of corporation. *Langstaff v. Lucas* (D. C. Ky. 1925) 9 F.(2d) 691, affirmed (C. C. A. 1926) 13 F.(2d) 1022, certiorari denied (1926) 47 S. Ct. 111, 273 U. S. 721, 71 L. Ed. 858; Gains of bookmakers, in absence of action by loser to recover. 1 B. T. A. 326. Stock given in payment of attorneys fees to extent of fair market value. 1 B. T. A. 472. Difference between market value of stock received in settlement of judgment and cost of procuring judgment. 1 B. T. A.

588. Amounts voluntarily paid by broker on resale of securities previously purchased from taxpayer. 2 B. T. A. 1239. Money received under use-and-occupancy policy. 3 B. T. A. 283. Improvement bonds or cash, withheld by city to guarantee repairs and maintenance. 3 B. T. A. 438. Cash received upon relinquishment of right under contract. 3 B. T. A. 475. Payments forfeited to vendor under installment contracts. 3 B. T. A. 751. Proceeds of sale of corporation's assets under contract providing that part of purchase price should be consideration for good will, represented by capital stock purchased by vendee and assigned to corporation for retirement. 3 B. T. A. 770. Proceeds of sale of cemetery lots under agreement to deposit percentage in fund to be accumulated for perpetual care. 4 B. T. A. 1169. Winnings of illegal lottery. 4 B. T. A. 1192. Earnings credited to principal stockholder and subject to withdrawal by him, where there was no evidence whether he was on cash or accrual basis. 6 B. T. A. 1031. 20 per cent. of part payment on a mortgage note acquired at a 20 per cent. discount. 8 B. T. A. 283. Amount set aside from sales by cremation association for perpetual care of niches, urns, and vaults. 10 B. T. A. 65. Gains from illegal transactions. 10 B. T. A. 905. Resulting profit on payment of endowment policy to insured. *Lucas v. Alexander* (C. C. A. Ky. 1928) 27 F.(2d) 237. Amount paid partner annually for maintenance of law library used by partnership. 12 B. T. A. 725. Amount received as indemnity for losses to crops. 12 B. T. A. 1241, following 12 B. T. A. 977.

The following items have been held not to constitute taxable income: Alimony. *Gould v. Gould* (1917) 38 S. Ct. 53, 245 U. S. 151, 62 L. Ed. 211, affirming (1915) 152 N. Y. S. 1114, 168 App. Div. 900. Gain from repayment of loan in depreciated German marks. *Bowers v. Kerbaugh-Empire Co.* (N. Y. 1926) 46 S. Ct. 449, 271 U. S. 170, 70 L. Ed. 886, affirming (D. C. N. Y. 1924) 300 F. 938. The enhanced value of property of a corporation arising from its gradual increase in value through a series of years prior to the enactment of an income tax law, although afterwards distributed. *Lynch v. Turrish* (Minn. 1916) 236 F. 653, 149 C. C. A. 649, affirmed (1918) 38 S. Ct. 537, 247 U. S. 221, 62 L. Ed. 1087. Money embezzled by defendant. *Rau v. U. S.* (C. C. A. N. Y. 1919) 260 F. 131. Mere growth or increment in value of asset not sold or disposed of. *U. S. v. Carter* (C. C. A. Fla. 1927) 19 F.(2d) 121; *Trust Co. of Georgia v. Rose* (D. C. Ga. 1928) 25 F.(2d) 997; 2 B. T. A. 921; 5 B. T. A. 402. Difference between estimated and actual value of deceased's interest in partnership received by executors. *U. S. v. Carter* (C. C. A. Fla. 1927) 19 F.(2d) 121. Annual payment made to insurance agent, pursuant to agreement made before March 1, 1913, for surrender of right to

commissions on renewal premiums except as to discount. *Platt v. Bowers* (D. C. N. Y. 1926) 13 F.(2d) 951. Portion of proceeds of cemetery lots passing to trustee for permanent maintenance. *Troost Ave. Cemetery Co. v. U. S.* (D. C. Mo. 1927) 21 F.(2d) 194. Widow's annuity under deceased husband's will, in lieu of statutory rights in estate. *Brandels v. Allen* (D. C. Neb. 1927) 22 F.(2d) 415. Proceeds of an accident insurance policy. (1918) 31 Op. Atty. Gen. 304. Growth of trees. 1 B. T. A. 1061. Moneys received by cemetery association under contracts with lot owners providing for perpetual care or moneys held in trust for perpetual care. 2 B. T. A. 495; 2 B. T. A. 910. Fee paid attorney under mutual mistake of fact. 2 B. T. A. 825. Payment of mortgages with warrants of reclamation districts embracing only taxpayer's lands. 2 B. T. A. 1179; 6 B. T. A. 1301. Payments under separation agreement. 3 B. T. A. 429. Payment on account of principal of loan. 3 B. T. A. 1038. Saving to taxpayer from composition agreement with creditors. 3 B. T. A. 1319. Purchase of own bonds or bonds of another whose liabilities had been assumed at a discount. 4 B. T. A. 870; 6 B. T. A. 436, 1364; 7 B. T. A. 397; 12 B. T. A. 436. Payment in settlement of action for libel. 6 B. T. A. 1023. Difference between contract price and amount paid in cash in lieu of mortgages under building contract. 7 B. T. A. 279. Excess of deductions for depletion over actual depletion on abandonment of lease. 7 B. T. A. 790, 798. Balances transferred from stockholder's accounts on the confidential ledger to general ledger. 8 B. T. A. 391. Cancellation of indebtedness. 9 B. T. A. 284; Damages for breach of contract to marry. 9 B. T. A. 1340. Difference between "reserve for unearned discount" as of December 31, 1918, and as of December 31, 1919. 10 B. T. A. 642. Amount received under the War Minerals Relief Act, as partial reimbursement for losses sustained. 10 B. T. A. 1140.

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

No instructions of the Treasury Department can enlarge the scope of the statute so as to impose the income tax upon unpaid charges for professional services rendered and which may never be paid. *Edwards v. Keith* (N. Y. 1916) 231 F. 110, 145 C. C. A. 298, affirming (D.



C. 1915) 224 F. 585, and certiorari denied (1917) 37 S. Ct. 402, 243 U. S. 638, 61 L. Ed. 942.

Where a corporation adopted a plan providing for the sale at par of an amount of stock equal to the outstanding stock to existing stockholders pro rata, and for the issuance to each purchaser, in addition to the stock purchased, of extra stock, and where large stockholders, agreed to take and pay for shares declined by other stockholders, the extra stock issued to such a stockholder, held not subject to income tax. *U. S. v. Mellon* (C. C. A. Pa. 1922) 281 F. 645.

Burden was on plaintiff, suing to recover income tax paid, to allege facts showing income was not subject to tax. *Lyons v. Reinecke* (C. C. A. Ill. 1926) 19 F.(2d) 3.

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

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

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

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

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

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

Difference between face value of policy convertible into endowment and surrender value at completion of premium payments plus accumulated dividends at March 1, 1913, was taxable gain subject to normal and surtax rates under 1918 Act upon payment of face value. 1 B. T. A. 206.

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

Total gains from gambling operations may not be segregated and included in

gross income when less than total losses during tax period. 1 B. T. A. 336.

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

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

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

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

Value of real estate conveyed to taxpayer in excess of intended gift held charged with a trust, for benefit of another and not income. 2 B. T. A. 1271.

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

Corporation's sale of entire capital stock for cash and deferred payments held a closed transaction resulting in no taxable gain or deductible loss, and deferred payments received in tax year held in part a return of capital, and in part gain. 5 B. T. A. 300.

Where husband quitclaimed his interest in mineral rights theretofore attempted to be conveyed by wife, portion of purchase money received by wife held taxable income. 5 B. T. A. 393.

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

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

Taxpayer insured its own goods and goods received for storage, and, upon their destruction by fire, received proceeds of policies and set up balance as reserve to meet future adjustments. Held, in absence of necessary evidence that balance of reserve was income to taxpayer in year in which proceeds of policies were received. 6 B. T. A. 1053.

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

Item found to have been erroneously duplicated in income. 7 B. T. A. 931.

Item determined to be part of gross income. 8 B. T. A. 309.

Distributions under testamentary trust are income which is not reduced by value of right to receive them. 8 B. T. A. 651.

A transaction held to have resulted in no profit. 8 B. T. A. 1011.

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

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

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

Petitioner whose property was illegally seized by Allen Property Custodian in 1918, and returned greatly depreciated in value in 1923 had no taxable income in 1918. 9 B. T. A. 925.

Compensation for services rendered in negotiating a sale of merchandise, which sale was not consummated held part of gross income of business and not a mere gratuity. 11 B. T. A. 780.

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

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

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

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

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

Sum received by retiring partner for share of good will, held a return of capital

and not taxable income. 1 B. T. A. 441.

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

Purchase by corporation of its own capital stock at less than price paid therefor by its stockholders held a capital transaction from which it realized no taxable gain. 5 B. T. A. 778.

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

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

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

Deferred payments under contract constituting consideration for sale of stock were based upon the number of tons mined annually from a mineral content of which was susceptible of accurate determination. Held, that portion of payments constituted a return of principal and balance a receipt of taxable income. 12 B. T. A. 586.

**23. Compensation for services.**—Under Act Oct. 3, 1913, c. 16, § II, div. B (repealed), a life insurance agent, whose contract entitled him to commissions of a specified percentage of the first premium of each policy and of a different percentage on subsequent renewal premiums when the same should be paid, was liable to pay the income tax on commissions on renewals of policies issued before the act was adopted, which were not paid until thereafter. Edwards v. Keith (N. Y. 1916) 231 F. 110, 145 C. C. A. 298, L. R. A. 1918A, 498, affirming (D. C. 1915) 224 F. 585, and certiorari denied (1917) 37 S. Ct. 402, 243 U. S. 638, 61 L. Ed. 942. To the same effect, see Woods v. Lewellyn (C. C. A. Pa. 1918) 252 F. 106; Platt v. Bowers (D. C. N. Y. 1926) 13 F.(2d) 951.

Under Income Tax Act 1913, § 2B (repealed) providing that net income should include income from salaries, wages, or compensation for personal services, "salaries" indicated a periodical payment as compensation for regular employment, while "wages" applied to manual labor. Merriam v. U. S. (C. C. A. N. Y. 1922) 282 F. 851, affirmed (1923) 44 S. Ct. 69, 203 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

Congress intended to cover payments under contracts of employment, expressed or implied, and to reach all forms of payment for services rendered; but whatever was sought to be taxed as compensation for services must be the consideration for work performed, or to be performed, and must be derived from or flowing from labor. *Id.*

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

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

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

Salary credited on books of corporation is not taxable unless it is available for use of employee. 1 B. T. A. 700. To substantially the same effect, see 2 B. T. A. 86, 549, 552; 4 B. T. A. 49; 9 B. T. A. 1404. And salaries credited on books and not drawn during tax year have been held not constructively received. 2 B. T. A. 635, 979, 1221. To substantially same effect, see 2 B. T. A. 255, 549.

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

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

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

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

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

Salary credited by but not received by

taxpayer, as officer of corporation which was able to pay, the receipt being entirely within his own control, is constructively received. 3 B. T. A. 231, 237.

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

Taxpayer on cash basis is not taxable on part of annual salary not paid during tax year. 3 B. T. A. 408.

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

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

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

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

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

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

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

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

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

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

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

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

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

Right to compensation for years prior

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

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

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

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

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

Amounts received by officers and employees from a fund created by former stockholders of a corporation, held taxable income. 10 B. T. A. 202.

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

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

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

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

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

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

**24. Gains on sales or exchanges.**—See, also, notes to sections 933, 934, and 935 of this title.

The gain or profit from sales of corporate stock or other personal property which are taxable as income are not limited to those sales by one engaged in buying and selling as a business but include also the gains from an isolated sale by an individual owner. *Merchants' Loan & Trust Co. v. Smietanka* (Ill. 1921) 41 S. Ct. 388, 255 U. S. 509, 65 L. Ed. 751, 15 A. L. R. 1305. Seemingly to the contrary, see *Brewster v. Walsh* (D. C. Conn. 1920) 268 F. 207, reversed in part and affirmed in part (1921) 41 S. Ct. 392, 255 U. S. 536, 65 L. Ed. 762.

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

Ct. 386, 255 U. S. 509, 65 L. Ed. 751, 15 A. L. R. 1305.

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

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

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

Profits from sale of liquor in violation of law held taxable. *Steinberg v. U. S.* (C. C. A. N. Y. 1926) 14 F.(2d) 564.

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

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

In *U. S. v. Cedarburg Milk Co.* (D. C. Wis. 1922) 288 F. 996, it was held that where corporation, on a sale or other disposition of the property, made a gain, the taxability of such gain was not to be avoided on the theory that its property became merged with the property of another corporation, and it was immaterial that part of the consideration was in corporate stock of the vendee, and that under state law no right existed to stipulate for part of the consideration in corporate stock.

Gain from conveyance of property for stock of family corporation, which had no market value, held not taxable "income." *Bourn v. McLaughlin* (D. C. Cal. 1927) 19 F.(2d) 148.

Proceeds from sale of stock of affiliated company in excess of price paid for assets of such company held not "taxable

gain." *United Drug Co. v. Nichols* (D. C. Mass. 1927) 21 F.(2d) 160. To the same effect, see 5 B. T. A. 520, 529, 1292.

Exchange of stock in one distinct corporation for stock in another, is an exchange of property, and any gain realized is income and taxable as such. *Noll v. U. S.* (1925) 61 Ct. Cl. 180, certiorari denied (1926) 46 S. Ct. 350, 270 U. S. 649, 70 L. Ed. 780.

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

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

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

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

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

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

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

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

Stockholder held to have realized gain on stock transferred to new corporation for cash which was subject to normal and surtax rates under Act 1916 where amount received and dividend from old corporation were used to buy stock in new corporation. 2 B. T. A. 777.

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

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

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

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

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

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

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

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

Sale by one member of affiliated group of stock in another member, is a sale by the group of its own capital stock. *Id.*

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

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

Sale held completed and income therefrom received and not incomplete because agents of Commissioner served notice of assessment and demand for taxes and notice of statutory lien. 5 B. T. A. 1073.

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

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

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

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

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

Exchange of property for stock though all of the stockholders entered into an agreement restricting sale, held to give rise to taxable income. 10 B. T. A. 108.

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

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

In absence of proof of value on March 1, 1915, the whole of payment for assignment of patents and right to invention held taxable income. 11 B. T. A. 201.

**25. Rents, royalties and bonuses.**—Royalties received from coal mining lessee held taxable income in hands of legatee. *Rosenberger v. McCaughn* (D. C. Pa. 1927) 20 F.(2d) 139.

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

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

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

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

Royalties received after March 1, 1913, for ore mined, removed, and stockpiled prior to March 1, 1913, are choses in action due lessor prior to that date, and are not taxable income. *Id.*

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

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

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

Rents and royalties received under leases of coal lands constitute gross income, and not proceeds from the sale of a capital asset. 8 B. T. A. 697.

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

**26. Interest.**—Corporate bondholder was not liable to assessment of income tax on interest due March 1, 1913, payable for the 6 months ending February 28, 1913,

under Act Oct. 3, 1913, § 2A, subd. J (repealed). *Plant v. Walsh* (D. C. Conn. 1922) 280 F. 722.

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

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

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

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

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

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

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

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

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

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

Amount of usurious interest received in excess of losses is taxable and should be reported as gross income though recoverable by payers. 7 B. T. A. 773.

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

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

Under Act Oct. 3, 1913, § 2, G(a) (repealed) dividends paid by lessee direct to stockholders of railroad corporation, which leased all its property, must be

deemed corporate income, and taxable as such. *Rensselaer & S. T. Co. v. Irwin* (N. Y. 1918) 249 F. 726, 161 C. C. A. 636, affirming (D. C. 1917) 239 F. 739, and certiorari denied (1918) 38 S. Ct. 424, 246 U. S. 671, 62 L. Ed. 931.

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

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

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

The normal tax paid under tax-free covenant by obligor upon coupons of bonds received and cashed by bondholder during year does not constitute taxable income to bondholder. 1 B. T. A. 1048; 4 B. T. A. 837; 5 B. T. A. 27; 10 B. T. A. 53, following *Duffy v. Pitney* (C. C. A.) 2 F.(2d) 230. *Contra*, *Massey v. Lederer* (D. C. Pa. 1921) 277 F. 123.

Two per cent portion of income tax of carriers, borne by Director General of Railroads pursuant to Federal Control Act (temporary) and compensation agreements, is not taxable income of carriers. 1 B. T. A. 1172; 2 B. T. A. 44, 892; 3 B. T. A. 597, 602, 604, 606; 6 B. T. A. 436; 9 B. T. A. 127, 1193.

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

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

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

The amount of State and Federal income tax paid by a corporation upon the income of its president, was income to him. 7 B. T. A. 648.

Terminal railroad company collecting amount of income and profits taxes from tenant companies held taxable thereon as income. 9 B. T. A. 304.

An amount paid by majority stockholder to petitioner to induce him to acquire minority stock was a reduction of the cost of the stock to petitioner and not taxable income to him. 10 B. T. A. 1036.

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

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

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

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

Donations received by cemetery association from lot owners, in trust for specific purpose of caring for and maintaining burial places in perpetuity, held not taxable income. 4 B. T. A. 903.

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

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

### III. EXEMPTIONS

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

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

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

Army officer is not entitled to \$3,500 exemption under sec. 213 (b) (8), Act of 1918 (repealed) in making return of income for 1921. 2 B. T. A. 423; 3 B. T. A. 596.

Salary of citizen of United States as justice of Mixed Courts of Egypt, paid to him by Government of Egypt not exempt. 3 B. T. A. 1056.

That law of Egypt requires that he be nominated by United States does not give him any exemption. Id.

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

The pay of retired Army officer not exempt under section 213(b) (9) of the Revenue Act of 1921 (repealed) as a pension. 8 B. T. A. 1165.

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

#### 42. Bequests, devises, and inheritances.

—Legacies given to persons named as executors, in lieu of compensation or commissions to which they would otherwise be entitled, are "property acquired by bequest," within Act Oct. 3, 1913, § 2, subd. B (repealed) and are not taxable as "income" for personal services, as actual service is not required as a condition of payment. *U. S. v. Merriam* (N. Y. 1923) 44 S. Ct. 69, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547, affirming (C. C. A. 1922) 282 F. 851, which reversed (D. C. N. Y. 1921) 275 F. 109.

Where will created trust, and provided for payment of portion of income to testator's son-in-law, held, such payments were taxable "income," under Income Tax Act 1913, § 2, A, subds. 1, 2, B, D, and E (repealed) and not a "gift" by will or bequest, exempt from such tax. *Irwin v. Gavit* (N. Y. 1925) 45 S. Ct. 475, 268 U. S. 161, 69 L. Ed. 897, reversing (C. C. A. 1923) 295 F. 84, which affirmed (D. C. 1921) 275 F. 643.

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

Under Act 1913, § 2B, providing that income includes the income, but not the value of property "acquired by gift, bequest, devise, or descent," the quoted words are words of exception, and not of exemption. Id.

Under will providing for "annuities" from funds set apart by trustee, income

held taxable and not exempt as "gift." *Heiner v. Beatty* (C. C. A. Pa. 1927) 17 F. (2d) 743, affirmed (1927) 48 S. Ct. 319, 72 L. Ed. —.

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

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

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

Income distributed annually to beneficiary of life interest not devise or bequest, but taxable income of beneficiary. 3 B. T. A. 260.

Income received by owner of life estate acquired by will is taxable and can not be regarded as nontaxable legacy or bequest. 5 B. T. A. 261.

Annuities paid to beneficiary under will held to have become charges against corpus of estate and exempt from tax under sec. 213 (b) (3), Act 1918 (repealed). 6 B. T. A. 163.

Where income from a trust was payable in event of beneficiary's death, to his estate, right of his estate in income came into fruition under trust and not through bequest of beneficiary, and annual income was taxable. 6 B. T. A. 871.

That right of beneficiary was valued and included in his gross estate, and that state courts held part of income to be corpus, can affect taxability of income. Id.

Income distributed to beneficiaries held income taxable to beneficiaries and not distribution of part of corpus acquired by bequest. 6 B. T. A. 900; 8 B. T. A. 651.

Where will contained no direction to pay annuity out of income moneys received as payments of annuity is exempt, under section 213 (b) (3) of the Act of 1921 (repealed). 7 B. T. A. 600.

#### 43. Gifts.—See, also, preceding note.

Amount paid to general superintendent and director of corporation under directors' resolution for distribution held not a gift, but taxable "income," within meaning of Revenue Act 1918, § 213, subd. (a), and subdivision (b), (3) (repealed). *Noel v. Parrott* (C. C. A. Va. 1926) 15 F. (2d) 669, reversing (D. C. 1925) 8 F.(2d)



368, certiorari denied (1927) 47 S. Ct. 457, 273 U. S. 754, 71 L. Ed. 875.

Evidence held to show that fund distributed to officers and employees of corporation was intended as gift, and not taxable income, in consideration of future services and fidelity. *Id.*

Interest purchased in the capital of a going concern includes the good will, which can not be separated therefrom for the purpose of treating it as a gift, and as such exempt. *Betts v. U. S.* (1926) 62 Ct. Cl. 1, certiorari denied (1927) 47 S. Ct. 475, 273 U. S. 762, 71 L. Ed. 879.

A gift is a valid transfer of property from one to another without consideration or compensation therefor. 5 B. T. A. 1042.

Elements are intention to give, transfer of title or delivery, and acceptance by donee. 3 B. T. A. 1042.

Upon evidence, held there was no element of gift in payment of additional compensation. 1 B. T. A. 1, 105.

Gains from bookmaking operations, though recoverable under state law, are acquired by winner as purchaser and not as donee, and are income. 1 B. T. A. 326.

Transfer upon books of partnership of part of one partner's capital to another partner is a gift and not income. 1 B. T. A. 350.

Amount equal to regular salary, paid to corporate officer during illness, held compensation and not a gift. 1 B. T. A. 1164.

Payment to taxpayer for bringing manufacturer in contact with parties from whom it secured material at advantageous price held compensation for services and not a gift. 3 B. T. A. 50.

Contributions by railroad to employees' relief association, held not property acquired by association by gift and exempted from taxation under sec. 213 (b) (3), Act 1918 (repealed). 4 B. T. A. 713.

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

Payments by corporation to stockholder and director, specifically designated as gifts, held gifts. *Id.*

Where taxpayer rendered valuable services and advice without any promise of compensation stock issued to him held a gift in satisfaction of moral obligation and not compensation for services. 6 B. T. A. 1371.

That certain payments were gifts rather than taxable income held not proved. 7 B. T. A. 726.

Cash gifts received by taxpayer from his father held erroneously added to taxable income. 11 B. T. A. 565.

Payment to president of corporation held a gift. 12 B. T. A. 254.

**44. Interest on Government and state obligations.**—Right to treat as exempt income interest on Liberty and Victory

bonds denied for want of evidence as to amount collected. 2 B. T. A. 286.

Interest on notes of political subdivisions of Rhode Island and Massachusetts, was erroneously reported as taxable income. 8 B. T. A. 555.

For normal-tax purposes, interest on Liberty bonds eliminated from taxable income. 11 B. T. A. 565.

**45. Income accruing to state.**—The statute exempts income accruing to the state, etc., and not the income of employees of a public utility. *City of Seattle v. Poe* (D. C. Wash. 1925) 4 F.(2d) 276.

The Pennsylvania workmen's compensation fund, established to insure employers against the liability imposed by the State workmen's compensation act, was exempt from taxation under section 11, paragraph (b) of the Act of 1926 (repealed). (1918) 31 Op. Atty. Gen. 308.

Income derived from contracts with state or its political subdivisions for construction of public works is not income derived from discharge of governmental functions and is not exempt from tax. 6 B. T. A. 527.

Where street railroad fare was raised or reduced at end of year if net return below or above specified return, no portion of gross income accrued to the City, and taxation thereof does not impose a loss or burden upon the municipality. 10 B. T. A. 310.

**46. Compensation of state and municipal officers and employees.**—Consulting engineers, advising states and subdivisions with regard to water and sewage projects, held not "officers" or "employees" of state or subdivision, whose earnings were exempt from taxation under Act 1917. *Metcalf v. Mitchell* (Mass. 1926) 46 S. Ct. 172, 269 U. S. 514, 70 L. Ed. 384.

Compensation of real estate expert in condemnation proceedings by city held not exempt from income tax, as money received for services as instrumentality of state government. *Lyons v. Reinecke* (C. C. A. III. 1926) 10 F.(2d) 3.

Compensation of auditor appointed by orphans' court to ascertain financial worth of surety companies held not exempt. *Miller v. McCaughn* (C. C. A. Pa. 1928) 27 F.(2d) 128.

Declaration held too indefinite and uncertain as to work plaintiff was employed to do and did, and whether it was such as to exempt money paid therefor from assessment. *Id.*

Society for the Prevention of Cruelty to Children, held not an agency of the state, and salaries of its officers held subject to income tax, under Act 1917. *Lindsay v. Bowers* (D. C. N. Y. 1927) 17 F.(2d) 264.

New York corporation authorized to act as executor is not officer, employee, or instrumentality of state government and is not exempted from income tax on fees. *New York Trust Co. v. U. S.* (1927) 63

Ct. Cl. 100, certiorari denied (1927) 47 S. Ct. 767, 274 U. S. 756, 71 L. Ed. 1336.

The salaries and wages of State officials and employees were not subject to the income tax imposed by the Revenue Act of 1918. (1919) 31 Op. Atty. Gen. 441.

Compensation paid by state or its subdivisions for legal services, is not exempt. 5 B. T. A. 1047; 10 B. T. A. 62; 7 B. T. A. 1238; 12 B. T. A. 474.

Compensation of architect under appointment as a member of board of supervisors in erection of public and municipal buildings held exempt but compensation fixed by contract with state and municipalities for work not of a permanent or continuous nature held subject to tax. 5 B. T. A. 1135.

Contractor held not an officer or employee of the State and compensation paid him by the State on contracts was subject to tax. 7 B. T. A. 777.

Attorney and counsel for the city board of waterworks trustees at annual salary held an officer or employee of a State or municipal subdivision thereof and his compensation was exempt. 8 B. T. A. 1191.

Claim for exemption of salary of director of an educational institution of which the State is trustee, denied. 9 B. T. A. 604.

Compensation for services rendered certain municipalities held not exempt on ground that taxpayer was neither officer, employee nor administrative agency of State or political subdivision thereof. 9 B. T. A. 708.

Where income of the husband is exempt from taxation because derived from services performed for a State government, it retains its exempt status in the hands of his wife entitled under community property laws to one-half. 9 B. T. A. 1180, holding attorney's compensation exempt though case argued after termination of office.

Architect engaged by city held not to have been city officer or employee. 10 B. T. A. 1394.

The salaries and wages of State officials and employees are not subject to the income tax imposed by the Revenue Act of 1918. (1919) 31 Op. Atty. Gen. 441.

Petitioner held an employee of the State and his income from services performed for that State held exempt. 12 B. T. A. 267.

See, also, notes to section 1065b of this title.

#### IV. PERSONS TO WHOM TAXABLE

51. In general.—A ground rent deed, whereby grantee covenanted to pay reserved rent, without any deduction for any taxes, etc., and to pay all taxes levied on yearly rent, must govern in determining which of the parties as between themselves is liable for the tax on income accruing thereunder, the federal law being silent on that subject. *Ehrlich v. Bro-*

*gan* (1918) 105 A. 511, 262 Pa. 362, affirming (1917) 65 Pa. Super. Ct. 384.

Profit upon sale by life tenant and remainderman taxable to life tenant where, under will, limitations over were subject to be defeated and income and profits belonged to her during life. 1 B. T. A. 1254.

Contention that part of profit was to enure to third person rejected for want of evidence. 2 B. T. A. 508.

Furniture found not to have been owned by taxpayer and rental not to constitute income to him. 2 B. T. A. 912.

Stock held not to have belonged to taxpayer but to have been sold by him as another's agent. 3 B. T. A. 257.

Profit upon sale of property of estate held not to have been realized by taxpayer in her individual capacity, when included in her account as administratrix and sale made for benefit of estate. 3 B. T. A. 413.

Real estate held not owned by taxpayer and gain upon sale not taxable income to her. 3 B. T. A. 429.

Finding made that moneys received by taxpayer were received by her as a loan to corporation and as treasurer of charitable organization, and were not her personal income. *Id.*

Where corporation was dissolved pending negotiations for sale of its property and property was transferred to stockholders who consummated sale profit, if any, enured to stockholders. 3 B. T. A. 780.

That corporation avoided tax liability by procedure taken is no justification, for holding that dissolution effected distribution of proceeds of sale rather than of property. *Id.*

Where partners received salaries from corporation and loaned them to corporation, salaries were taxable to partners as individuals. 4 B. T. A. 916.

Where corporation became insolvent and discontinued business, and stockholders formed partnership which carried on similar business, under same name income held taxable to partners and not to corporation. 4 B. T. A. 950.

Where cemetery association created trust fund for perpetual care, interest on fund held income to trustee and not to association. 4 B. T. A. 1169.

Where corporation was organized to take over hotel operated by a partnership, but never issued any stock and did not acquire the hotel gains or losses were those of the partnership. 5 B. T. A. 314.

Where lessor causes to be incorporated in lease direction that rents and royalties be paid to third persons amounts paid are income of lessor. 5 B. T. A. 413.

Evidence held insufficient to prove that moneys were received by widow in fiduciary capacity. 6 B. T. A. 114.

Income accrued to life beneficiary at date of her death and paid to her executor, held not taxable to succeeding beneficiary. 6 B. T. A. 426.

Entire profit from sale included in income where testimony did not support claim that taxpayer owned only a half interest. 6 B. T. A. 761.

Income from sales held not taxable to corporation, when sales were by syndicate to which it loaned money. 6 B. T. A. 949.

Fees and commissions earned by officers of a national bank, as agents for insurance companies are not income of the bank. 7 B. T. A. 84, 94.

Income held that of petitioner. 8 B. T. A. 375.

Petitioner held to have been purchaser of certain stock as principal and not an agent. 9 B. T. A. 398.

Income derived from business and other property from July 1, when owner closed books to August 22, 1919, when he contracted to sell to corporation organized by him was the income of such owner. Held, further, that the net income for the 6-month period from July 1, to December 31, 1919, may be allocated to such owner on the basis of the proportion of 52/184. 10 B. T. A. 712.

Evidence held not to show another's part ownership of royalties taxed to petitioner. 10 B. T. A. 868.

Inclusion in income of profit from short sales of sugar sustained for lack of evidence that such transactions were not carried out in taxpayer's individual capacity. 10 B. T. A. 1268.

Royalties paid to petitioner's mother and wife held income of petitioner. 11 B. T. A. 743.

Portion of profits of business payable to taxpayers' sisters in accordance with their father's will held not taxable income. 11 B. T. A. 789.

Petitioner held not entitled to exclude from income sums paid his mother under an alleged partnership agreement. 11 B. T. A. 743.

Where an individual owner incorporated business on April 24, 1917, and corporation filed return for fiscal year ended January 31, 1918, Commissioner properly prorated earnings and allocated earnings from February 1, 1917, to April 24, 1917, to the individual. 11 B. T. A. 1309.

Petitioner and his children held partners in operation and management of theatres, and only distributive share of partnership profits included in petitioner's income. 12 B. T. A. 164.

Instrument held an assignment of profits and assignor and not assignee taxable thereon. 12 B. T. A. 565.

Corporation having received and retained gain from transaction of its president cannot deny that it received taxable income from that source. 12 B. T. A. 855.

Where stockholder became owner of all except two qualifying shares of capital stock, but corporate entity was maintained to avoid personal liability and business was conducted substantially as before income of business held that of the corporation. 12 B. T. A. 1052.

Partnership held to exist between father and sons in connection with farms and income from sale of the oil royalty interests accrued to them in equal shares. 12 B. T. A. 1232.

See, also, 12 B. T. A. 865.

**52. Effect of gift or transfer of property or interest.**—Between husband and wife, see note 55.

Where assignor of future income from property remains the owner thereof, the income therefrom is taxable to him. *Bing v. Bowers* (D. C. N. Y. 1927) 22 F.(2d) 450, affirmed (C. C. A. 1928) 26 F.(2d) 1017.

Income from property owner of which had assigned sums payable from net income, retaining control thereof, held taxable to owner. *Id.*

Granting clause of instrument creating annuity payable from rents, income, and profits held not to pass interest, or create rent charge, precluding taxation of interest to grantor. *Id.*

Parties purchasing opposing litigant's claimed interest in land held not liable for income tax on oil royalties paid vendor as purchase price. *Looney v. U. S.* (D. C. La. 1928) 26 F.(2d) 481.

Tax liability cannot be modified by contract to pay share of partnership profits to third person, so as to exclude any part of such share from individual net income. 1 B. T. A. 143, 150.

Taxpayer held not to have made bona fide gift of stock from which income derived but to own same. 2 B. T. A. 77.

Assignee held beneficial owner of contract to purchase real estate, and to have realized gain upon subsequent sale. 2 B. T. A. 788.

Net profits from sale of property transferred to corporation by joint venturers held not to belong to corporation but taxable income of joint venturers. 2 B. T. A. 851; 4 B. T. A. 605.

Transfers of stock held bona fide gifts. 3 B. T. A. 301, 362; 9 B. T. A. 24.

Transfer of assets of business to taxpayer held an absolute sale and profits were taxable income of taxpayer. 3 B. T. A. 403.

Where individual organized corporation and transferred his business to it, such proportion of entire year's profits allocated to him as number of days of operation as an individual bore to total number of days in year. 4 B. T. A. 516.

That business was sold as of beginning of taxable year did not relieve individual from liability for tax on profits earned prior to incorporation. *Id.*

Parol grant of land, accompanied by delivery of possession, held a valid transfer of title, and grantor, upon subsequent sale of timber not taxable upon gain derived. 4 B. T. A. 619.

Share of profit from joint venture is income to venturer though assigned to another immediately upon receipt. 5 B. T. A. 616.

Where stockholder executed valid declaration of trust under which he held

property for benefit of children, income not taxable as his income. 5 B. T. A. 903; 8 B. T. A. 759.

Statement by taxpayer to trustee for joint venturers, that he had made a gift of part of his interest, insufficient to establish gift. 6 B. T. A. 250.

Gain upon the sale of stock transferred to name of children, held taxable to petitioner. 7 B. T. A. 1244.

Where sole stockholder took over business during year, income for balance of year taxable to him and not to corporation. 8 B. T. A. 65.

Stockholder taking over business not relieved from tax because corporation improperly included subsequent income in its return. Id.

Where owner, of right to receive royalties unconditionally assigned undivided interests therein to his children, the income resulting from such production held not taxable to the assignor. 10 B. T. A. 732.

Petitioner held taxable upon gain from the sale in 1919 of certain shares of stock alleged to have been previously conveyed as a gift to her daughter. 11 B. T. A. 621.

Where taxpayer made an oral gift of land to his son, but before he entered into possession the tract was sold, taxpayer was owner under laws of Nebraska and profit was properly included in his gross income. But where he made oral gift of land to children and after making contract of sale, deeded land to children to whom payments on the purchase price were made, the children were held the owners and taxpayer realized no taxable gain from the transactions. 11 B. T. A. 651.

Where taxpayer gave dividends on stocks, etc., to charitable organization, but at all times retained ownership and possession of stocks, bonds, notes and real estate from which the income assigned was derived income held taxable to him. 12 B. T. A. 350.

That a short time before sale of stock, seller told certain individuals that they should have all that he realized from the sale of the stock over and above \$250 a share, did not limit amount of profit taxable to him. 12 B. T. A. 438.

**53. Husband or wife—In general.**—Husband held not subject to income tax on entire profits of a business, part of which was owned and the profits received by his wife. *Hamilton v. Commissioner of Internal Revenue* (C. C. A. 1928) 24 F.(2d) 668. To the same effect, see 6 B. T. A. 1123; 9 B. T. A. 547, 834; 10 B. T. A. 1234.

Interest paid to payee on notes held part of his gross income, though deposited in joint account in name of payee and his wife and included by latter in her separate return. 2 B. T. A. 172.

Gain from sale of real estate conveyed to taxpayer's wife and purchased with funds contributed by her held not income to husband. 2 B. T. A. 1300.

While under laws of Michigan, marriage

of partners may dissolve partnership, it does not divest wife of her interest in assets or income and where business is continued husband and wife are joint venturers and wife's share of income is not taxable to husband. 6 B. T. A. 541, 1232.

Only one-half of interest paid on note payable to husband and wife is income to wife. 7 B. T. A. 465.

Property on which oil and gas leases given held property of husband. 7 B. T. A. 560.

Salary paid wife by husband for services rendered him in his business, held improperly included in the husband's income. 8 B. T. A. 979.

Ownership of stock in a corporation as between husbands and wives determined from the evidence. 11 B. T. A. 979.

As to effect of agreement that future acquired property be held in joint ownership, see 10 B. T. A. 1377.

Income from securities deposited by husband under separate maintenance agreement held taxable to husband, though depository was authorized to use principal on husband's default. 12 B. T. A. 800.

Parol agreement as to ownership by a wife of stock in name of the husband, supported by action of parties in reporting income, accepted as proof of ownership. 12 B. T. A. 1306.

**54. — Community or separate profits.**—Under Revenue Act Feb. 24, 1919, §§ 210, 211 (repealed), income of community property of persons living in California may be taxed wholly against husband, regardless of whether wife has a genuine interest or a mere expectancy. *U. S. v. Robbins* (Cal. 1926) 46 S. Ct. 148, 269 U. S. 315, 70 L. Ed. 285, reversing (D. C. 1925) 5 F.(2d) 690. To the same effect, see *Blair v. Roth* (C. C. A. 1927) 22 F.(2d) 932, certiorari denied (1927) 48 S. Ct. 436, 72 L. Ed. —; 4 B. T. A. 682; 5 B. T. A. 593, 597, 668; 6 B. T. A. 1084; 7 B. T. A. 114, 882. And in the absence of agreement to the contrary earnings of both husband and wife are community property and taxable to the husband. 11 B. T. A. 1294.

Agreement of spouses as to disposal of their earnings held not to prevent wife's earnings from being "community income," taxable to husband. *Blair v. Roth* (C. C. A. 1927) 22 F.(2d) 932, certiorari denied (1927) 48 S. Ct. 436, 72 L. Ed. —.

In Washington, Arizona, Idaho, New Mexico, Louisiana, and Nevada the husband and wife domiciled therein may each report as gross income one-half of the income which under the laws of the respective states becomes, simultaneously with its receipt, community property; this applies under income-tax acts prior to the Revenue Act of 1918. (1921) 32 Op. Atty. Gen. 435.

Earnings of husband and wife domiciled in Texas are community income, and husband and wife may each report as gross

income one-half of the total earnings. (1920) 32 Op. Atty. Gen. 298.

Where business income is produced in part by separate property and in part by efforts of community, earnings will be allocated, but if income attributable primarily to one element, other element disregarded. 2 B. T. A. 640.

Where services of community incidental to profits, there is no presumption that profits attributable entirely to services of community. Id.

Where any presumption that profits attributable to community services is overcome by evidence, if there be any presumption it is that separate property was primary source of profits. Id.

Where property purchased in part with separate funds of wife and in part with joint funds and title taken in wife's name, profit on sale was not income to husband. 3 B. T. A. 313.

Earnings of a wife during coverture which are her separate property may not be included in taxable income of husband. 4 B. T. A. 679, 832, 833, 834, 915, 1071, 1073, 1074, 1075.

Existence of agreement that wife's separate earnings shall be her separate property may be proved by circumstantial evidence. 4 B. T. A. 1071.

Inclusion in husband's income of wife's earnings not disturbed in absence of evidence that such earnings were separate property. 4 B. T. A. 1074, 1203.

So held with regard to salary paid wife by husband. 4 B. T. A. 1109.

Evidence held insufficient to overcome presumption that securities were community property. 4 B. T. A. 1149.

Where husband invests wife's separate property in a partnership, wife's pro rata share of gain derived from sale of interest in partnership is not taxable to husband. 6 B. T. A. 312.

That resident of California owns an interest in a partnership in Washington, a community property state, does not prove that income will be community income when received. 7 B. T. A. 820.

Property held wife's separate property and profit realized her separate income. 8 B. T. A. 213.

Failure to determine tax liability on community-property basis approved. 8 B. T. A. 1121.

Husband's distributive share of partnership income held separate property, and taxable to him. 9 B. T. A. 915; 9 B. T. A. 921.

Determination that income of resident of Arizona from interest in Georgia and Massachusetts partnerships was separate income, approved. 9 B. T. A. 1073.

Profit on sale of land determined and apportioned between husband and wife. 9 B. T. A. 1222.

Where income was derived principally from business carried on in a noncommunity-property state, and Commissioner determined that none of it was commu-

nity income, husband was not entitled to divide certain income between himself and wife and exclude from his return the portion allocated to the wife. 10 B. T. A. 601.

Where husband and wife, residents of California, agreed to divide profits from investments equally, but that each should be entitled to receive as separate property compensation for services, the profits and compensation received by the wife should not be included in the husband's taxable income. 10 B. T. A. 1096. To substantially the same effect, see 10 B. T. A. 1233, 1345, 1374.

Where income from business produced in part by separate property and in part by efforts of community, value placed upon services by parties accepted as a reasonable apportionment. 11 B. T. A. 26.

Husband, having received community income, was taxable with the same though divorce decree transferred a portion of it to his wife. 11 B. T. A. 441.

Under agreement prior to marriage, earnings of wife held community property immediately upon receipt and taxable to the husband. 11 B. T. A. 1294.

55. — **Gifts and transfers by husband to wife.**—Assignment by husband to wife of interest in property made during negotiations for sale to third person, held a bona fide gift and subsequent sale by wife did not result in taxable income to husband. 2 B. T. A. 1012. To substantially same effect, see 3 B. T. A. 964, 969, 974; 6 B. T. A. 788, 1142.

Finding made as to nature of conveyance of real estate by husband in trust for wife for determining whether income from such real estate constituted income to husband. 2 B. T. A. 1061.

Husband held to have realized taxable income on sale of stock to extent of difference between purchase and sale price of stock though stock had been assigned to wife. 3 B. T. A. 491.

Bona fide gift of stock in corporation which dissolved and conveyed real estate to stockholders, who sold it, held, not a gift of proceeds of sale. 3 B. T. A. 780.

Renewal commissions paid, under contract with insurance company, to wife as assignee of contract, held income to husband. 3 B. T. A. 826.

Interest on note transferred to wife as a gift, not taxable to husband. 4 B. T. A. 47.

Assignment to wife of deferred purchase price installments held not a bona fide transfer and profit from sale was income to husband. 5 B. T. A. 628.

Cash dividends held taxable income to husband, notwithstanding previous assignment to wife of right to receive dividends. 5 B. T. A. 963.

Wife's distributive share of income of partnership between herself and a third person held not taxable to husband, where husband had transferred his interest to his wife. 6 B. T. A. 1123.

Immaterial that gift was made by hus-

band to avoid payment of taxes. 6 B. T. A. 1142.

Transaction held sale of business to husband by wife: and entire income taxable to husband. 7 B. T. A. 362.

Husband, in good faith held to have given to wife his interest in a coal mine, and profits from operation was her, and not his, income. 7 B. T. A. 924.

Salary and fees of resident of California, are taxable to him notwithstanding agreement to divide them with his wife. 10 B. T. A. 723. To substantially the same effect, see 10 B. T. A. 1237.

As to assignment to wife of life interest in income from husband's property, see 11 B. T. A. 406.

#### V. YEAR FOR WHICH INCLUDED

**61. In general.**—Under Income Tax Act 1913, § 2, par. G (repealed) tax is on income received during the year, as regards domestic corporations. Maryland Casualty Co. v. U. S. (1920) 40 S. Ct. 155, 251 U. S. 342, 64 L. Ed. 297, modifying (1917) 52 Ct. Cl. 201.

Where insurer allows its agents to give 30 days for payment of premiums, and requires them on the 5th of each month to remit balance due it as shown by last preceding monthly statement rendered to it, premiums received by them, but not yet remitted to it, are "received" by it within Act, but not so as to premiums not yet paid to agents. *Id.*

An instruction of the Treasury Department requiring return to be made of fees or emoluments for services charged for, but not collected, if good and collectible, cannot change the requirement of the statute that the income tax shall be based on the income arising or accruing during the calendar year. *Edwards v. Keith* (C. C. A. N. Y. 1916) 231 F. 110, certiorari denied (1917) 37 S. Ct. 402, 243 U. S. 638, 61 L. Ed. 942.

Where, under lease, a building erected by the lessee becomes the property of the lessor immediately upon its construction, and some years thereafter the lessor acquires possession of the premises the building cannot be regarded as income accruing to the lessor during the year in which he acquired possession of it and taxed as such. *Miller v. Gearin* (Or. 1919) 258 F. 225, 169 C. C. A. 293, certiorari denied (1919) 40 S. Ct. 13, 250 U. S. 667, 64 L. Ed. 1197. To the same effect, see *Cryan v. Wardell* (D. C. Cal. 1920) 263 F. 248, (holding also that the Treasury Department has no power to abrogate a substantive rule of law by a regulation directing taxing officers to include permanent improvements under leases as income for the year in which the lease ends); 4 B. T. A. 756.

Where a receiver, by order of the court, was paid a sum monthly for his services, with liberty to apply for additional compensation at the end of the receivership, such final allowance, made at the end of

five years, held "income" for the then current year, and not distributable for income tax purposes through the preceding years of service. *Jackson v. Smietanka* (C. C. A. Ill. 1921) 272 F. 970, affirming (D. C. Ill. 1920) 267 F. 932.

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

Date of completion of road contract, and not date of acceptance, held correct date for determining profit on long-term road contract. *Thomas Cronin Co. v. Lewellyn* (D. C. Pa. 1925) 9 F.(2d) 974.

Dividend held taxable as "income" of year when actually received and not as of date of court order requiring its payment. *Kales v. Woodworth* (D. C. Mich. 1927) 20 F.(2d) 395.

Freights held income subject to tax as such during fiscal year received, though bookkeeping entries were made in preceding year in anticipation of receipt. *Robert P. Hyams Coal Co. v. U. S.* (D. C. La. 1928) 26 F.(2d) 805.

Unearned freight charges, not transferred to following fiscal year, in absence of evidence showing when charges became a liability. 1 B. T. A. 217.

Income and profits taxes are levied on gains and profits for annual periods; each annual period must stand by itself, subject to adjustment of one year's net losses against another year's profits. 1 B. T. A. 317.

Items improperly reported in prior year, but which constitute income within year under method of accounting employed, must be returned in that year. 1 B. T. A. 460; 6 B. T. A. 555. And omission in proper years does not justify inclusion for a subsequent year. 10 B. T. A. 73; 9 B. T. A. 105.

Additional salary for 1917 and 1918, paid by check drawn December 31, 1918, which was received in January, 1919, held not constructively received in 1918. 1 B. T. A. 998.

Where Government chartered vessels and agreed to pay owner, upon their return, an amount sufficient to restore them to original condition, a sum received in 1919 is income for 1919. 1 B. T. A. 1149.

Where sole stockholder filed certificate of dissolution, but, continued to conduct business he was not a liquidating trustee under secs. 7063, 7069, Ala. Code, so that receipt of taxable income was postponed until actual distribution. 2 B. T. A. 159.

Where, pursuant to contract, lessee paid

tax of its lessor for preceding year amount so paid is not income to lessor for the preceding year. 2 B. T. A. 215; 2 B. T. A. 991. *Quære*: Whether it is income for year in which paid? 2 B. T. A. 215.

Contract for subdivision and sale of land held a contract of agency; hence, only commissions received by agent upon sales constituted income to him, which was taxable in year in which received. 2 B. T. A. 1169.

Cash and notes worth face value, received by ball club in tax year in consideration of assignment of rights under contract with ball player are taxable income in year of receipt. 3 B. T. A. 149.

Where equitable assignment of stock was made to taxpayer under contract to remain in employ of corporation for specified period, portion so delivered each year is income in year of delivery to extent of fair market value. 3 B. T. A. 929.

Commissioner's action in including entire profit from construction contract for year in which contract was completed approved for want of necessary evidence. 4 B. T. A. 58.

In determining when title passes under contract, actual construction by parties is entitled to greater weight than interpretation by Government for purpose of determining tax liability. 4 B. T. A. 568.

Where resolution to dissolve was passed, but business was continued and assets not distributed until following year, stockholder realized no gain or loss until latter year. 4 B. T. A. 1068.

Coupons on bonds deposited in bank and credited to taxpayer's account held income in year in which they became payable rather than in year in which they were deposited. 4 B. T. A. 1079.

Where taxpayer changed from cash to accrual basis, inventory of supplies on hand and cost of unexpired insurance at that time should be included in gross income. 4 B. T. A. 1080.

*Quære*: Whether government, having collected tax upon income as earned in one year, is estopped, after period of limitation from collecting tax upon same amount as income for subsequent year? 5 B. T. A. 79.

Claims against carriers for loss or damage carried as accounts receivable, when representing claims arising from transactions in prior years should be eliminated. 5 B. T. A. 480.

Where individual on calendar year basis operated a separate business the books of which were kept on fiscal year basis, entire net income of separate business for fiscal year ending within his calendar year held properly included in income for calendar year. 5 B. T. A. 755.

Any gain realized by stockholder from inflation of value of leases on corporate books held not realized in tax year. 6 B. T. A. 323.

Profits of prior years improperly included in return should be excluded from income for tax year. 6 B. T. A. 403.

Amounts credited to employee toward payment of stock to be issued as additional compensation if he should remain for specified period, held not taxable prior to issuance and delivery of stock certificate. 6 B. T. A. 450.

Pro rata portion of premium on bonds of taxpayer, based on life of bonds, may not be included in income of tax year, where bonds were issued at a premium prior to, and were outstanding at close of, tax year. 6 B. T. A. 1025. To the same effect, see 8 B. T. A. 490, 492, 495.

Gain from repossession of real estate reported by taxpayer for a certain year not reallocated and included in income for later year, where date of repossession not proved by best available evidence. 6 B. T. A. 1123.

Income and deductions are determined upon an annual basis. Items of income received in 1920 may not be deferred to a subsequent year. 7 B. T. A. 391.

Where trustee's compensation was placed in escrow to be held as security for the payment of notes and was not received by the petitioner during the years 1923, 1924, or 1925, the petitioner derived no income therefrom. 7 B. T. A. 734.

Amount received in 1915 for cancellation of lease is income for that year. 7 B. T. A. 860.

Stockholders who did not receive bonuses during the taxable year though credited on books not taxable upon them. 7 B. T. A. 895.

Amount accepted in settlement of certain claims held not received in 1923. 7 B. T. A. 917.

Additional compensation which corporate officer did not receive during the taxable year, and which the corporation had not sufficient funds to pay, was not income to the decedent. 8 B. T. A. 685.

Evidence insufficient to show that the Commissioner erred in allocation of income. 8 B. T. A. 694.

Stock conditionally issued to employee subsequently discharged was not income during the year in which final court decision was rendered in suit to recover the stock. 8 B. T. A. 888.

Net sum received as compensation for loss of profits in prior years, held taxable income for the year in which received. 8 B. T. A. 986.

Income from certain contracts held taxable in 1921. 9 B. T. A. 238.

Interest to be paid by Director General of Railroads on cost of additions and betterments included in the computation of gross income in the years when it accrued. 9 B. T. A. 365.

Executrix's fees which she refused to accept were not income during year in which charged on books with explanatory memorandum. 9 B. T. A. 460.

No error committed by the Commission-

er in disallowing as a deduction from 1919 income, net profits alleged to have been earned in 1918. 10 B. T. A. 170.

Determination that a certain commission earned in the taxable year was income in such year not disturbed. 10 B. T. A. 308.

Amount recovered by Government contractor measured by difference between expenditures and receipts in suit based on misrepresentations by Government representatives in making the contract held income in year in which recovered. 11 B. T. A. 452.

Amount of discounts not earned or collected by a banking corporation at the close of its taxable year should not be included in its taxable income for such year. 12 B. T. A. 66.

Income in 1916 impounded by court order and released to petitioner in 1917 held not taxable in 1917. 12 B. T. A. 68.

Profits from operation of flour mill under lease agreement which was involved in litigation included as income for fiscal year, in which actually received although the litigation was not then concluded. 12 B. T. A. 147.

On purchase of notes at less than their par value, only so much of discount as was earned within the tax year is income for that year. 12 B. T. A. 150.

Where the petitioner determines its income upon the basis of completed contracts and has performed all of the work required and received all payments in 1920, notwithstanding right to make an audit within two years, and notwithstanding certain work of rearranging the plant income must be reported in 1920. 12 B. T. A. 523.

Additional compensation paid under section 524 et seq. of Title 39, Postal Service, by the Government in 1920, for transporting United States mail in 1916 and 1917, held not taxable income for 1919. 12 B. T. A. 889.

Promissory notes given in 1921 by vendees to vendors, in consideration of mutual release of all claims and rights under contract entered into in 1920, constitute income for 1921, and not for 1920. 11 B. T. A. 1329.

Syndicate held not a closed and completed transaction within the taxable year and, alleged profits therefrom improperly taxed in that year. 11 B. T. A. 1336.

**62. Gains on sales.**—As affected by basis on which books are kept, see following notes.

Premiums on bonds sold, received not later than 1904, held not taxable income to be prorated or amortized over life of bonds. Commissioner of Internal Revenue v. Old Colony R. R. (C. C. A. 1928) 26 F.(2d) 408.

Profits from sale of property held assessable in year when binding contract of sale is made under Act 1918. Davidson & Case Lumber Co. v. Motter (D. C. Kan. 1926) 14 F.(2d) 137.

Gain from sale of real estate under contract with small down payment held taxable as of year transfer was completed and substantial payment made. Steiff v. Tait (D. C. Md. 1928) 26 F.(2d) 489.

Where half of purchase price of real estate is paid in cash and remainder is secured by mortgage payable in monthly installments, transaction is not an installment sale and entire gain is taxable in year of sale. 1 B. T. A. 168.

Entire gain from sale of two farms held taxable in 1917, when agreement made though one conveyed and part of price paid in 1918. 1 B. T. A. 502.

Profit from sales of property for part cash held taxable in year of sale. 1 B. T. A. 548; 2 B. T. A. 1027; 3 B. T. A. 257; 3 B. T. A. 846; 4 B. T. A. 219; 4 B. T. A. 619; 10 B. T. A. 308; 10 B. T. A. 497.

Proceeds of sale received by agent included in income of year in which received by agent. 2 B. T. A. 598.

Bank purchased assets of bankrupt estate through agent and caused them to be liquidated at a profit, the agent making deposits in bank from time to time of proceeds of liquidation. Held, net gain was realized in year in which liquidation was completed. 2 B. T. A. 1239.

Sale of machinery subject to test after installation held contingent upon acceptance and profit realized in year in which acceptance took place. 3 B. T. A. 247.

Gain derived from sale of fixtures in prior year not included in gross income of tax year. 4 B. T. A. 35.

Sale of cotton produced but not sold during tax year not considered in computing income. 4 B. T. A. 427.

Contract of sale giving vendee option to return property prior to time for final payment, held not a completed transaction until vendee had exercised option. 4 B. T. A. 605.

Gain or loss upon sale of partnership interest held not to have been realized in year in which oral agreement to sell was entered into, but not executed. 4 B. T. A. 893.

Sale by corporation, of entire capital stock for cash and deferred payments based on annual production, held, a closed transaction in year in which sale was made. 5 B. T. A. 300.

Purchase of real estate, held, a closed transaction as of date when contract entered into notwithstanding deed subsequently delivered. 5 B. T. A. 929.

Income from liquidation held realized when directors as trustees sold assets to themselves as stockholders. That, under state law, legal title to assets vested in stockholders at date of dissolution was not determinative. 6 B. T. A. 595.

Where vendor voluntarily requested that escrow agent withhold payment of proceeds until following year, proceeds were available to vendor during tax year and gain was realized in such year. 6 B. T. A. 605.



Difference between cash selling price and deferred payment price, is not interest on deferred payments to be excluded from gross income for years prior to year in which payment became due. 6 B. T. A. 713.

Sale found to have taken place in 1917. 7 B. T. A. 820.

Date when received determined. 7 B. T. A. 1112; 8 B. T. A. 103; 9 B. T. A. 427.

Where no part of purchase price was received in year of sale, partial payment received in following year in which contract was cancelled, was income of that year. 8 B. T. A. 225.

Petitioner held taxable in year of sale upon the proceeds of sale of property received in settlement of suit. 8 B. T. A. 1219.

Judgment entered pursuant to agreement held not determination that other party held the property as a constructive trustee for petitioner. *Id.*

Income held income of 1920, when purchase money was paid, rather than of 1919, when contract of sale was signed. 9 B. T. A. 270.

Profit on sale of property subsequently reacquired on foreclosure of prior mortgage, held taxable in year of sale. 9 B. T. A. 1016.

Portion of profit received in tax year, determined. 9 B. T. A. 1072.

Pursuant to agreement assignment was delivered to an escrow agent to be held until purchase money notes were paid. Held that a taxable transaction occurred when such payments were made and the assignment delivered to the escrow agent. 9 B. T. A. 1342.

Gain on sale of stock held taxable in year in which option was exercised and the stock sold and delivered. 10 B. T. A. 554.

Year of sale determined for taxation purposes. 10 B. T. A. 672.

Contract construed to be agreement, for a conveyance to be made in 1921 and sale held consummated and profit therefrom derived in 1921. 10 B. T. A. 799.

Where buyer refused to accept merchandise, and prior to close of year no settlement had been reached, but on Jan. 3, 1921, seller received letter dated Dec. 31, 1920, ordering the merchandise at reduced price, and orders were accepted, amount of payment accompanying letter was not income in 1920. 11 B. T. A. 62.

Taxable gain held to result from sale in 1922 of portion of land purchased in 1917 determined by an allocation of the purchase price to the portion sold in that year. 11 B. T. A. 958.

Sale of realty held completed in year in which the contract and deed were executed and possession delivered though documents placed in escrow. 12 B. T. A. 203.

See, also, 10 B. T. A. 361.

**63. Cash basis.**—Salary or bonus taxable in year in which received though earned or credited on employer's books in prior year, at least if not available in such year. 1 B. T. A. 173; 2 B. T. A. 179, 180, 825; 3 B. T. A. 110; 5 B. T. A. 716; 6 B. T. A. 450, 1048; 7 B. T. A. 150, 267, 621, 1084; 9 B. T. A. 1226; 10 B. T. A. 920; 12 B. T. A. 1.

Lessor may not include royalties which should have been but were not paid during year. 1 B. T. A. 372.

Compensation received in 1918 by attorney for services rendered and billed to clients in 1917, held income for 1918 though drafts would have been honored in 1917. 2 B. T. A. 754.

Rule that compensation is income when received does not apply to payment under mutual mistake of fact. 2 B. T. A. 825.

Tenant in common taxable on full distributive share of profits from operation of orchard, rather than upon profits actually paid him. 2 B. T. A. 1057.

Royalties held income to taxpayer when credited on books of corporation to which taxpayer was indebted. 2 B. T. A. 1069.

Sale of real estate held not made in 1919 when contract was entered into and down payment made, but in 1920 when balance was paid and deed delivered though title passed to purchaser when contract was entered into. 2 B. T. A. 1109.

Rent is income to taxpayer in year of receipt by agent. 3 B. T. A. 601.

Where payment of interest is deferred by agreement it constitutes income in year of payment. 4 B. T. A. 317.

Interest due in tax year is income only for year in which collected. 4 B. T. A. 748.

Partners who keep no individual books cannot be said to be on accrual basis merely because they had personal accounts on books of partnership which was on accrual basis, and salaries received by them from a corporation and loaned to partnership and charged on its books to their personal accounts are taxable to them in year of receipt. 4 B. T. A. 916.

Where payments made to attorney in settlement of claim, only amounts actually paid over to client were taxable income in year of payment. 4 B. T. A. 1192.

Taxpayer, who had distributive interest in trust estate, held not taxable in 1917 on pro rata share of interest on bonds not paid until 1921. 4 B. T. A. 1198.

Receipt of agreement from purchaser to execute promissory notes in subsequent year, in part payment of purchase price, does not constitute receipt of cash, or its equivalent. 5 B. T. A. 806.

Compensation for 1919 paid on Jan. 1, 1920, to corporate officer making return on cash basis, held income for 1920 notwithstanding corporation was permitted

to rewrite books on accrual basis and deduct salary from gross income for 1919. 5 B. T. A. 1164, 1169.

Accounts receivable included in income for year in which collected. 6 B. T. A. 249.

Bank discount not received or earned within tax year not income for that year. 6 B. T. A. 535.

Compensation paid by check dated in year in which services were rendered and received in following year, is income for following year. 6 B. T. A. 586.

Dividend payable and unqualifiedly subject to stockholder's demand on last day of year, held income for that year though not received until following year. 6 B. T. A. 614.

Taxpayer on cash basis, cannot complain of distortion of income through inclusion of compensation received in tax year for services rendered in prior years. 6 B. T. A. 1048.

Notes received in compromise of a damage suit which did not have a market value do not constitute taxable income for the year in which received. 8 B. T. A. 838.

Amount received in tax year should be reported as sale price of interest in lease, though further amount payable on contingency and paid in following year. 8 B. T. A. 1164.

A dividend payable on December 31, 1923, but not received until January 2, 1924, is 1924 income. 8 B. T. A. 1301.

When deed and purchase price placed in escrow until examination of abstract, transaction held not consummated. 9 B. T. A. 629, overruling on reargument 5 B. T. A. 1191.

Dividends declared and credited in one year, of which the taxpayer did not receive notice until the following year, income in year in which he received notice. 10 B. T. A. 563.

Commissions deducted from principal in making loans not taxable income until commissions actually paid. 11 B. T. A. 1034.

Bonus for 1920 authorized and paid in 1921 held taxable in 1921. 12 B. T. A. 365.

64. **Accrual basis.**—Absolute sale and delivery in one year, under contract providing for payment of specified amounts in subsequent year, held a completed sale in former year, the profits from which are income in such year to seller on accrual basis. 2 B. T. A. 851.

Under accrual system, receipt of income, actual or constructive, is not essential. 2 B. T. A. 933.

Profits credited to taxpayer by corporation were constructively received, and should have been accrued and reported in years in which earned and credited. Id.

That taxpayer obliged to maintain cash balance with corporation, did not make profits credited to him unliquidated or contingent. Id.

Entire amount paid taxpayer by chamber of commerce for constructing plant in city was taxable income in year in which plant was completed. 3 B. T. A. 169.

Proceeds of insurance against loss of profits from fire constituted accrued income to extent only of amount of insurance payable, for number of days within fiscal year during which business was suspended. 3 B. T. A. 283.

Withheld percentages due subcontractor which were neither paid nor placed at its disposal, held improperly included in accrued income for years in which earned. 4 B. T. A. 211.

Increase in accounts receivable for tax year, should be included in income. 4 B. T. A. 375.

Commissions earned by partnership are income for years in which earned and part of distributive shares of partners though collected in subsequent year. 4 B. T. A. 916.

Commissions constitute income in year in which they were earned, irrespective of year in which collected. Id.

Where property is sold during tax year and delivered to purchaser whose liability is definitely fixed, transaction is a closed transaction, though purchase price was neither determined nor paid until subsequent year. 4 B. T. A. 967.

Compensation for use of carrier's properties during period of federal control held income for each accounting period for which compensation was allowed, although not received until later date. 5 B. T. A. 15, 108; 6 B. T. A. 84, 436; 8 B. T. A. 225.

Tantiemes, or additional compensation for services accrued in year in which earned, constituted income in that year though amount was computed and entered on books after close of year. 5 B. T. A. 79.

Gross income must be reported in year in which it accrues. Act 1918, secs. 212, 213 (repealed). 5 B. T. A. 435.

Income accrued in 1918 for work done in that year held properly returned as part of 1918 income. Id.

Dividend declared in one year and payable on first day of following year, held income for year in which dividend declared. 6 B. T. A. 60.

Entire amount paid in consideration of surrender of contract of employment providing for percentage of earnings held income for the year in which paid notwithstanding recipient kept his books and rendered his returns upon an accrual basis. 7 B. T. A. 32.

Where bad debts were charged off in 1919, but in 1920 debtor gave notes for the debts, notes were income for 1920 and not for 1919. 7 B. T. A. 670.

Where notice that option would be exercised was given and title approved in 1916 but there was no delivery or tender and payment was made and deed delivered in

1917, price first accrued in 1917, and any gain is to be reported in 1917. 7 B. T. A. 1193.

Shares of corporate earnings received after tax year held to have accrued in years in which services rendered. 8 B. T. A. 787.

Amounts received by shipbuilder in 1923 in settlement of claims against Emergency Fleet Corporation held income of that year. 9 B. T. A. 189, revising 5 B. T. A. 739.

Where sale price of goods sold subject to inspection were accrued on seller's books, and on September 25, 1920, the goods were rejected by the buyer, the seller should not include the sale price in gross income for the year ended September 30, 1920. 9 B. T. A. 579.

Bank discount accrued in 1918 as earned within that year but actually paid and received in 1919, held improperly reported as income for 1918, and to constitute income for 1919 although erroneously reported as income for the prior year. 10 B. T. A. 642.

#### VI. AMOUNT OF INCOME

**71. In general.**—Where a holder of shares of stock was given the right to subscribe for an equal number of shares of a new issue of stock, which right it sold, the sum received therefor is not taxable in its entirety as income received during the year, under Income Tax Act Sept. 8, 1916, § 2 (repealed), but the amount taxable is the gain or profit realized from the sale which was the excess of the sum received above the net value, after deducting the subscription price, of the new shares it would have obtained by itself exercising the right. *Safe Deposit & Trust Co. of Baltimore v. Miles* (D. C. Md. 1921) 273 F. 822, affirmed (1922) 42 S. Ct. 483, 259 U. S. 247, 66 L. Ed. 923.

Officer must report only amount at which compensation is finally adjusted at close of year. 1 B. T. A. 103.

Gross income from bookmaking operations determined. 1 B. T. A. 326.

Gross profits of merchant, who took no inventories and whose accounts consisted of daily record of purchases and sales, computed on basis of 33%, and net profit on 22%, of sales. 1 B. T. A. 665.

Taxpayer's method of computing unearned discount approved. 1 B. T. A. 922.

Finding made as to amount of income received by taxpayer from rents. 2 B. T. A. 494. As to salary actually drawn. 2 B. T. A. 1257; 7 B. T. A. 615. As to amount of compensation paid. 3 B. T. A. 242, 425. As to income from sale and re-acquisition of interests in business, and operations of business. 8 B. T. A. 213. As to gross income for eight-month period. 8 B. T. A. 287. As to net sales, expenses, and amount of taxes paid. 8 B. T. A. 749.

Commissioner's action in adopting average percentage of profit on gross sales for four-year period to compute gross profits approved. 2 B. T. A. 1200.

Increase in income from rent disallowed when already included. 3 B. T. A. 209.

Computation of gross income and net income on basis of bank deposits approved. 3 B. T. A. 1349.

Where individual organized corporation and transferred his business to it during his taxable year, profits taxable to individual computed by allocating to him such proportion of the entire year's profits as number of days of operation as an individual bore to total number of days in year. 4 B. T. A. 516.

Income from sales may not be arbitrarily increased over amount shown on books when fairly kept. 3 B. T. A. 41.

Manufacture of goods abroad does not reduce the profits from their sale in the United States. 5 B. T. A. 402.

Evidence held insufficient to show overstatement of rentals and gain from sale of stock. 7 B. T. A. 1076.

Amount held erroneously added to income. 8 B. T. A. 68.

Deduction of 7 per cent. discount from total of invoice amounts held proper in the computation of gross sales. 8 B. T. A. 419.

For lack of sufficient evidence of incorrectness, determination of amount of salaries approved. 8 B. T. A. 710.

Stock received as compensation for services taxable only to extent of its fair market value when received. 8 B. T. A. 992.

Evidence held insufficient to warrant a change in respondent's determination of income. 9 B. T. A. 1194; 10 B. T. A. 174.

Method of computing income from certain real estate transactions determined. 10 B. T. A. 503.

Where petitioner's books and accounts have been lost, work sheets and office copies of reports of accountants held to establish the business income. 10 B. T. A. 860.

Transaction between corporation and principal stockholders construed and held to be contributions to capital rather than reductions of salary. 11 B. T. A. 524.

**72. Valuation of property received.**—Value of good will as fixed in agreement between surviving partners, accepted as evidence of actual value at date of acquisition. 1 B. T. A. 441.

Where stock closely held, price paid to stockholder for purpose of forcing him out of corporation does not reflect actual value. 3 B. T. A. 475.

Evidence of unsuccessful efforts to sell stock or secure loans 4 or 5 years after receipt has no bearing on market value at time of receipt. 3 B. T. A. 911.

Dividends held to support Commissioner's valuation. Id.

Commissioner's finding of market value of stock approved. 3 B. T. A. 920.

Corporate bonds held to have had a market value of not to exceed 50% of par value, though subsequently paid. 4 B. T. A. 397, 398, 399.

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