TAX DEPOSITION QUESTIONS: 3. JURISDICTION

3. JURISDICTION

Introduction

The U.S. Government does NOT have legislative, i.e. taxing jurisdiction, *inside* the fifty states. Therefore, the federal government cannot tax the income of ordinary Americans.

Findings and Conclusions

With the assistance of the following series of Questions, we intend to prove that Congress lacks the Authority to legislate an income tax on the people except in the District of Columbia, the U.S. Territories, and in those geographic areas within any of the 50 states where the states have specifically authorized it in writing. We will also show that:

- **The terminology used in the Internal Revenue Code is deliberately misleading. The average American who reads words such as "citizen", "taxpayer", "state", etc. in the tax code without fully understanding the true legal definitions, will fail to see that in fact, they are excluded, and are not subject to the income tax laws of the U.S.**
- **Legislative jurisdiction is required to tax. The federal government enjoys this Constitutional power in only a very small list of geographical areas that include Washington DC. There is no legislative jurisdiction inside the 50 states.**
- **Jurisdiction must be formally ceded by a state to the federal government. Without this formal transmission, the federal government has no bona fide legal jurisdiction within any state to legislate or enforce a tax.**

Bottom Line: The federal government cannot tax your income within the fifty states because they have NO legislative jurisdiction**.**

Section Summary

Witnesses:

- Larry Becraft (Constitutional Attorney)
- John Turner (Ex. IRS Collection Agent)
- William Benson (Ex. Illinois Revenue Investigator)

Transcript

Acrobat version of this section including questions and evidence (large: 5.68 Mbytes)

Further Study On Our Website:

- Authorities on Jurisdiction of Federal Courts
- A Detailed Study Into the Meaning of the term "United States" found in the Internal Revenue

Code
- DEFINITIONS: "taxpayer"
- Great IRS Hoax book:
    - Section 3.16.6: Downes v. Bidwell, 182 U.S. 244
    - Section 4.8: The Federal Zone
    - Section 4.10: Citizenship
    - Section 5.2: Federal Jurisdiction to Tax
    - Section 5.6.5: "Taxpayer" v. "Nontaxpayer"
    - Section 5.6.12: The Nonresident Alien Position
    - Section 8.4.2: Defeating the Anti-Injunction Act (26 U.S.C. §7421)

- IRS Due Process Meeting Handout (OFFSITE LINK) -SEDM
- Test for Federal Tax Professionals
- U.S. Attorney Manual §9-20.000: Maritime, Territorial and Indian Jurisdiction
- U.S. Attorney Manual §9-4.139: Statutes Assigned by Citation, 26 U.S.C. Internal Revenue Code
- Two Political Jurisdictions: "National government" v. "Federal/General Government" (OFFSITE LINK) -SEDM
- Federal Jurisdiction, Form #05.018 (OFFSITE LINK) -SEDM

3.1. Admit that at Section 7608(a) of the Internal Revenue Code, Congress set forth the authority of internal revenue officers with respect to enforcement of Subtitle E and other laws pertaining to liquor, tobacco, and firearms. (WTP #33)

- Click here for 26 U.S.C. §7608 (WTP Exhibit 018)

3.2. Admit that at Section 7608(b) of the Internal Revenue Code, Congress set forth the authority of internal revenue officers with respect to enforcement of laws relating to internal revenue other than Subtitle E. (WTP #34)

- Click here for 26 U.S.C. §7608 (WTP Exhibit 018)

3.3. Admit that the term "person" as that term is used in Internal Revenue Code Section 6001 and 6011 is defined at Section 7701(a)(1). (WTP #35)

- Click here for 26 U.S.C. §6001 (WTP Exhibit 007)
- Click here for 26 U.S.C. §6011 (WTP Exhibit 008)
- Click here for 26 U.S.C. §7701(a)(1) (WTP Exhibit 019)

3.4. Admit that Internal Revenue Code Section 7701(a)(1) states: "The term person shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation." (WTP #36)

- Click here for 26 U.S.C. §7701(a)(1) (WTP Exhibit 019)

3.5. Admit that trusts, estates, partnerships, associations, companies and corporations do not have arms and legs, do not get married, do not eat, drink and sleep, and are not otherwise included in what one not trained in the law would recognize as a "person." (WTP #37)

3.6. Admit that Internal Revenue Code Section 6012(a) states that: "(a) General Rule. Returns with respect to income taxes under subtitle A shall be made by the following: (1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount . . . ." (WTP #38)

- Click here for 26 U.S.C. §6012 (WTP Exhibit 020)

3.7. Admit that Internal Revenue Code Section 1 imposes a tax on the taxable income of certain "persons," who are "individuals" and "estates and trusts." (See 26 U.S.C. § 1.) (WTP #39)

- Click here for 26 U.S.C. §1 (WTP Exhibit 002)

3.8. Admit that the "individual" mentioned in Internal Revenue Code Section 6012 is the same individual as mentioned in Internal Revenue Code Section 1. (WTP #40)

- Click here for 26 U.S.C. §1 (WTP Exhibit 002)
- Click here for 26 U.S.C. §6012 (WTP Exhibit 020)

3.9. Admit that the "individual" mentioned by Congress in Internal Revenue Code Section 6012 and Internal Revenue Code Section 1 is not defined anywhere in the Internal Revenue Code. (WTP #41)

- Click here for 26 U.S.C. §1 (WTP Exhibit 002)
- Click here for 26 U.S.C. §6012 (WTP Exhibit 020)

3.10. Admit that 26 C.F.R. § 1.1-1 is the Treasury Regulation that corresponds to Internal Revenue Code Section 1. (WTP #42)

- Click here for 26 U.S.C. §1 (WTP Exhibit 002)
- Click here for 26 CFR §1.1-1 (WTP Exhibit 021)

3.11. Admit that at 26 C.F.R. § 1.1-1(a)(1), the individuals identified at Section 1 of the Internal Revenue Code are those individuals who are either citizens of the United States, residents of the United States, or non-resident aliens. (WTP #43)

- Click here for 26 U.S.C. §1 (WTP Exhibit 002)
- Click here for 26 CFR §1.1-1 (WTP Exhibit 021)

3.12. Admit that the "residents" and "citizens" identified in 26 C.F.R. § 1.1- 1(a)(1) are mutually exclusive classes. (WTP #44)

- Click here for 26 CFR §1.1-1 (WTP Exhibit 021)

3.13. Admit that as used in 26 C.F.R. Sec. 1.1-1, the term "resident" means an alien. (WTP #45)

- Click here for 26 CFR §1.1-1 (WTP Exhibit 021)

3.14. Admit that 26 C.F.R. Section 1.1-1(c) states that: (WTP #46)

"Every person born or naturalized in the United States, and subject to its jurisdiction, is

a citizen."

- Click here for 26 CFR §1.1-1 (WTP Exhibit 021)

3.15. Admit that a person who is born or naturalized in the United States but not subject to its jurisdiction, is not a citizen within the meaning of 26 C.F.R. § 1.1-1. (WTP #47)

- Click here for 26 CFR §1.1-1 (WTP Exhibit 021)

3.16. Admit that on April 21, 1988, in the United States District Court, Southern District of Indiana, Evansville Division, in the case of United States v. James I. Hall, Case No. EV 87-20-CR, IRS Revenue Officer Patricia A. Schaffner, testified under penalties of perjury that the terms "subject to its jurisdiction" as used at 26 C.F.R. 1.1-1(c) meant being subject to the laws of the country, and that meant the "legislative jurisdiction" of the United States. (WTP #48)

- Click here for 26 CFR §1.1-1
- Click here for "Judicial Tyranny and Your Income Tax," Jeffrey A. Dickstein, J.D., Custom Prints, 1990, Appendix B, pp. 309-357 (WTP Exhibit 022)

3.17. Admit that in the same case, Patricia A. Schaffner testified under oath the term "subject to its jurisdiction" could have no other meaning than the "legislative jurisdiction" of the United States. (WTP #49)

- Click here for "Judicial Tyranny and Your Income Tax," Jeffrey A. Dickstein, J.D., Custom Prints, 1990, Appendix B, pp. 309-357 (WTP Exhibit 022)

3.18. Admit that when Patricia A. Schaffner was asked to tell the jury what facts made Mr. Hall subject to the "legislative jurisdiction" of the United States, the prosecutor, Assistant United States Attorney Larry Mackey objected, and the court sustained the objection. (WTP #50)

- Click here for "Judicial Tyranny and Your Income Tax," Jeffrey A. Dickstein, J.D., Custom Prints, 1990, Appendix B, pp. 309-357 (WTP Exhibit 022)

3.19. Admit that the Internal Revenue Service is never required by the Federal courts to prove facts to establish whether one is subject to the jurisdiction of the United States. (WTP #51)

- Click here for "Judicial Tyranny and Your Income Tax," Jeffrey A. Dickstein, J.D., Custom Prints, 1990, Appendix B, pp. 309-357 (WTP Exhibit 022)

3.20. Admit that the United States Department of Justice and United States Attorneys, and their assistants, always object when an alleged taxpayer demands the Government prove that they are subject to the jurisdiction of the United States, and the federal courts always sustain those objections, which means that the federal courts routinely prohibit the introduction of potentially exculpatory evidence in tax crime trials. If there are exceptions to this rule, please identify them specifically. (WTP #52)

3.21. The IRS keeps a system of financial records on federal judges (Treasury System of Records 46.002 as identified in Treasury/IRS Privacy Act of 1974 Resource Document #6372), IRS Criminal Investigation Division Special Agents, and U.S. Attorneys, which records cannot be accessed by the subject(s) under the FOIA or Privacy Act. (WTP #52(a))

- Click here for Treasury System of Records 46.002 (WTP Exhibit 023)

3.22. Admit that unless specifically provided for in the United States Constitution, the federal government does not have legislative jurisdiction in the states. (WTP #53)

- See United States v. Lopez, 514 U.S. 549 (1995) (WTP Exhibit 024)

3.23. Admit that 40 U.S.C. §255 identifies the only method by which the federal government may acquire legislative jurisdiction over a geographic area within the outer limits of a state of the Union, which is by state cession *in writing*. (WTP #53a)

- Click here for 40 U.S.C. §255 (WTP Exhibit 024a)

3.24. Admit that on December 15, 1954, an interdepartmental committee was commissioned on the recommendation of the Attorney General of the United States, Herbert Brownell, Jr., and approved by President Eisenhower and his cabinet, named the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States, and charged with the duty of studying and reporting where the United States had legal authority to make someone subject to its jurisdiction. (Note: this report hereinafter referred to as "the Report.") (WTP #54)

- See "*Jurisdiction over Federal Areas Within the States: Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States,*" April 1956, hereinafter "the Report." (379 page document, 869k) (WTP Exhibit 025)

3.25. Admit that in June of 1957, the "Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States" issued "Part II" of its report entitled "Jurisdiction Over Federal Areas Within the States." (WTP #55)

- See Report, p. 197 (WTP Exhibit 025a)

3.26. Admit that the Report makes the following statements: (WTP #56)

a. "The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction -- by State consent under Article I, section 8, clause 17... Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued, no transfer of jurisdiction can take place."

- Click here for Report, p. 41 (WTP Exhibit 025b)

b. "It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise by the State, subject to non- interference by the State with Federal functions,"

- Click here for Report, p. 45 (WTP Exhibit 025c)

c. "The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State,"

- Click here for Report, p. 46 (WTP Exhibit 025d)

d. "On the other hand, while the Federal Government has power under various provisions of the Constitution to define, and prohibit as criminal, certain acts or omissions occurring anywhere in the United States, it has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crime occurs on areas as to which legislative jurisdiction has been vested in the Federal Government."

- Click here for Report, p. 107 (WTP Exhibit 025e)

3.27. Admit that the phrase "subject to **their** jurisdiction" as used in the Thirteenth Amendment means subject to both the jurisdiction of the several states of the union and the United States. (WTP #57)

- Click here for Thirteenth Amendment to U.S. Constitution (WTP Exhibit 026)

3.28. Admit that the "subject to **its** jurisdiction" component of the definition of citizen set out at 26 C.F. R. Section 1.1-1(c) has a different meaning than the phrase "subject to their jurisdiction" as used in the Thirteenth Amendment to the Constitution of the United States. (WTP #58)

- Click here for 26 CFR §1.1-1 (WTP Exhibit 021)
- Click here for Thirteenth Amendment to U.S. Constitution (WTP Exhibit 026)

3.29. Admit that the term "foreign" is nowhere defined in the Internal Revenue Code. (WTP #58a)

3.30. Admit that the term "foreign" means anything outside of the legislative jurisdiction of the Congress, which means anything outside of federal property ceded, in most cases, to the federal government by the states as required by 40 U.S.C. §255. (WTP #58b)

- Click here for 40 U.S.C. §255 (WTP Exhibit 024a)

3.31. Admit that a Treasury Regulation cannot create affirmative duties not otherwise imposed by Congress in the underlying statute, corresponding Internal Revenue Code section. (WTP #59)

- Click here to see C.I.R. v. Acker, 361 U.S. 87, 89 (1959) or online at C.I.R. v. Acker, 361 U.S. 87, 89 (1959) (WTP Exhibit 016)
- Click here to see U.S. v. Calamaro, 354 U.S. 351, 358-359 (1957) or online at U.S. v. Calamaro, 354 U.S. 351, 358-359 (1957) (WTP Exhibit 017)

3.32. Admit that Congress defined a "taxpayer" at Section 7701(a)(14) of the Internal Revenue Code, as any person subject to any Internal Revenue tax. (WTP #60)

- Click here for 26 U.S.C. §7701 (WTP Exhibit 019)

3.33. Admit that "subject to" is defined in in Black's Law Dictionary, Sixth Edition, page 1425 as: (WTP #60a)

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for." Homan v. Employers Reinsurance Corp., 345

Mo. 650, 136 S.W.2d 289, 302

- Click here for evidence (WTP Exhibit 019a)

3.34. Admit that based on the above definition of "subject to", use of the term "taxpayer" in describing anyone creates a presumption of liability for tax on the part of the person being referred to. (WTP #60b)

3.35. Admit that the IRS uses the term "taxpayer" to refer to *everyone*, including those not necessarily subject to or liable for Subtitle A income taxes. (WTP #60c)

3.36. Admit that in ***Botta v. Scanlon***, 288 F.2d. 504, 508 (1961), a federal court said: (WTP #60d)

> *"A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the states as a person liable for the tax without an opportunity for judicial review of this status before the appellation of 'taxpayer' is bestowed upon them and their property is seized..."*

- Click here for Botta v. Scanlon, 288 F.2d. 504 (1961) (WTP Exhibit 019b)

3.37. Admit that, based on the above, it is a violation of due process and a violation of delegated authority for any IRS tax official to refer to any person as a "taxpayer" who does not first identify him or herself as such *voluntarily*. (WTP #60e)

3.38. Admit that the federal courts, in the case of ***Long v. Rasmussen***, 281 F. 236 (1922) stated at 238: (WTP #60f)

> *"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..."*
>
> *"The distinction between persons and things within the scope of the revenue laws and those without is vital."*

- Click here for Long v. Rasmussen, 281 F. 236 (1922) (WTP Exhibit 019c)

3.39. Admit that one who is not a citizen, resident, or non-resident alien, is not an individual subject to the tax imposed by Section 1 of the Internal Revenue Code. (WTP #61)

- Click here for 26 U.S.C. §1 (WTP Exhibit 002)
- Click here for 26 U.S.C. §6012 (WTP Exhibit 020)

3.40. Admit that an individual who is not subject to the tax imposed by Section 1 of the Internal Revenue Code, is not an individual required to make a return under the Requirement of Internal Revenue Code Section 6012. (WTP #62)

3.41. Admit that the Supreme Court, in a dissenting opinion of Judge Harlan in the case of Downes v. Bidwell, 182 U.S. 244 (1901), stated: (WTP #62a)

"The idea prevails with some, indeed it has found expression in arguments at the bar, that we have in this country substantially two national governments; one to be maintained under the Constitution, with all of its restrictions; the other to be maintained by Congress outside the independently of that instrument, by exercising such powers [of absolutism] as other nations of the earth are accustomed to..I take leave to say that, if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will result. We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism..It will be an evil day for American liberty if the theory of a government outside the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution."
*[**Downes v. Bidwell**, 182 U.S. 244 (1901)]*

- Click here for Downes v. Bidwell, 182 U.S. 244 (1901) (WTP Exhibit 019d)

3.42. Admit that the jurisdiction that Honorable Justice Harlan above was referring to where "legislative absolutism" would or could reign was in areas subject to the legislative jurisdiction of the U. S. government, which includes the District of Columbia, federal enclaves within the states, and U.S. territories and possessions. (WTP #62b)

3.43. Admit that the Internal Revenue Manual says the following, in section 4.10.7.2.9.8: (WTP #62c)

4.10.7.2.9.8 (05-14-1999)

Importance of Court Decisions

1. *Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.*
2. *Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.*
3. ***Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated.*** *Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.*

- Click here for IRM §4.10.7.2.9.8

3.44. Admit that the Internal Revenue Service, in its responsive letters to tax payers, routinely and chronically violates the above requirements by citing cases below the Supreme Court level, which do not apply to more than the individual taxpayer in question according to the above. (WTP #62d)

SECTION 3-JURISDICTION SUMMARY

Key to the enforcement of any law or the imposition of any legal duty is the concept of "jurisdiction".

Every legal entity such as a state, city or county must have proper jurisdiction over a person, place or a subject matter to exercise police power, zoning authority, taxing authority, etc. These jurisdictions are as one might surmise, limited primarily and simultaneously by geographical area and subject matter. A legal entity can operate only within a fixed, limited boundary and only over subjects it can legally control.

This is also true of our federal government.

Our Constitution's singular purpose was to explicitly LIMIT the powers granted to the federal government by the states and by the People. Additionally, the Constitution reiterates that the government is to protect the unalienable and unenumerated rights of the People.

Simply, the Constitution says what the government can do and where it can do it. The federal government's legislative legal authority is based on "limited territorial jurisdiction", that is, legislative jurisdiction based on a strict geographical delineation.

Per the Constitution, this delineation only includes Washington DC and federal territories and possessions such as Guam, Puerto Rico, U.S. Virgin Islands, etc.

There are additional matters the government has jurisdiction over by virtue of the "interstate commerce" clause, post office clause, etc. They also have jurisdiction for military forts and arsenals, etc. within the 50 states, but only where both the land and legal jurisdiction have been formally ceded by the state **in writing** to the federal government.

Contrary to the accepted notion in the public and the media, our government, has in fact, very limited Constitutional authority to enact laws that affect us directly in the fifty states. The Constitution was designed to keep power decentralized in the states.

Because the federal government lacks bona fide legislative jurisdiction within the fifty states, they also lack the authority to tax there.

The government can't tax what it can't legislate and where it can't legislate.

To remove or ignore this Constitutional structure would be to nullify the very sovereignty and existence of the states as legal entities, and give birth to the very tyranny the Constitution was designed to protect us from.

The questions asked in this section examine who and what are the subjects of this tax and where geographically the are these income tax laws applicable.

As you examine the evidence and sworn testimony, try to extrapolate how this evidence affects other aspects of government as we currently know it. How can much of what our government does be legal if it conflicts with the Constitution? Do we still have a Constitution?

Is the issue of jurisdiction a "Pandora's box" the federal government does not want opened?

Embedded Secure Document

The file *file:///I|/Main/CDs-Data/SEDM/TaxDepositionCD/IRSDeposition/Sect3Jurisdiction-Transcript.pdf* is a secure document that has been embedded in this document. Double click the pushpin to view.

AN INVESTIGATION INTO THE MEANING OF THE TERM '*UNITED STATES*'

Table of contents

Introduction and warning

My primary objective in this investigation is to provide a sketch of some of the meanings of the term 'United States,' and scrutinize how the general misinterpretation of this key term, and others, has led to the incorrect deciphering of the Internal Revenue Code—which has prompted most Americans to falsely believe that they have always had some legal obligation to fill out a Form W-4, to file a return, and to pay income tax—although I do stray from this point considerably, in addressing tax and other matters. But basic is defining the 'United States.'

I can not stress too strongly that despite the many aspects of tax law that are dealt with, it was never my intent to provide tools, in any manner, for confronting the IRS. Preparation for such interfacing requires exacting knowledge of proper strategies and **procedure**, to which I do not even allude. That is a whole other area of study, which I cannot adequately go into here. At times, an ingenuous scribbled reply has prevailed, in a response to a request for an overdue tax return (CP-515 to 518)…but don't count on it! And, if you think merely quoting some law, or regulation, or interpretation of facts will do the trick, please restrain yourself.

This is, rather, a diligent inquiry into the true nature of the matters examined, and nothing in this paper should be construed as legal advice. I am only presenting the results of my research, based on the codes, statutes, court cases, government manuals, directives, Treasury Orders, etc.—all of which are referenced and, usually, quoted in pertinent part. I apologize for any undocumented statement that I might have carelessly made. Ignore it.

By the end of this paper, I hope to have proven to your complete satisfaction that the government, being constitutionally constrained, as it is, was really not able to do a thorough job of encrypting its code—for almost everything has to be, by law, and is, spelled out. Therefore, those who are sufficiently pertinacious, and have unbiased eyes to see, can eventually arrive at an adequately clear picture. But, once again, this a theoretical examination of certain topics, and not an attempt to suggest any course of action in confronting the IRS.

As a matter of fact, with one notable exception, strategies that successfully deal with the IRS have no need to employ the interpretation espoused in this paper, viz. that when the Internal Revenue Code, uses the term 'United States,' except where it specifies otherwise, refers only to the **federal States**, such as the District of Columbia, Guam, the Virgin Islands, Puerto Rico, etc., and federal possessions and enclaves—in other words, what I will often refer to as the federal zone. To take one of many examples, if one were to simply ask the IRS for the section in the code that required her/him to file a return and obligated him/her to pay income tax, the definition of 'United States' would, obviously, be utterly irrelevant.

There is, as mentioned, one strategy that does employ this knowledge. I only call attention to it because for a quarter of a century it has enabled thousands of knowledgeable Americans to be reclassified to the status of one not obligated to pay income tax—and this speaks volumes as to the veracity of the explication in this paper of the term 'United States,' as used in the IRC. Because this strategy rests entirely on this interpretation. In a word, it involves the proper utilization of IRC § 6013(g)(4) **Termination of election** (A) Revocation by taxpayers, which I comment on pages 10, and especially

page 46.

AN INVESTIGATION INTO THE MEANING

OF THE TERM 'UNITED STATES'

TOGETHER WITH SOME OTHER RELATED TERMS

AND SELECTED MATTERS HAVING

TO DO WITH TAXATION

I doubt if many Americans have ever given a second thought to the meaning of the term 'United States,' or would believe that it could be a perplexing question. It would have my vote, however, as being by far the most important and controversial 'word (or term) of art,' *vocabula artis*—also referred to as a 'statute term,' 'leading word (or term),' or what the French call *parol de ley*, technical word of law—in all American legal writings…as well as the most dangerous. For it is ambivalent, equivocal, and ambiguous. Indeed, as you will see, its use in the law exemplifies 'patent ambiguity,' which is defined as:

> An ambiguity apparent on face of instrument [sic] and arising by reason of any inconsistency or inherent uncertainty of language used so that effect is either to convey **no definite meaning** or **confused meaning.** (*Black's Law Dictionary*, 6th edition. Emphasis added.)

Reading Hamlet in the park this afternoon, I chanced on to an intriguing way to put it. In the words of King Claudius:

> The harlot's cheek, beautified with plast'ring art,
> Is not more ugly to the thing that helps it
> Than is my deed to my most ***painted word***.
> O heavy burden! (III, I, 51-54. Emphasis added.)

The editor, Harold Jenkins, in his notes on 'painted' says: "…fair but false in appearance, like the beauty of the painted cheek." What serendipity to find this, just as I am on my final proofing of this paper. It is so appropriate, to describe how 'United States' usually is used by the government. And it has indeed imposed on us all a 'heavy burden'!

With dogged determination and perseverance, however, one can succeed in seeing through this meticulous and painstakingly contrived duplicity. For, fortunately, Congress must define all terms that

it uses in a particular and special way. For example, in the Internal Revenue Code (IRC), chapter 79 **Definitions,** Section 7701 **Definitions,** it states: "(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof…" It goes on, then, to define many 'terms of art.' These definitions apply throughout the code, "where not otherwise distinctly expressed"—which will sometimes be done for a single chapter, section, subsection, or even sentence… which, you will later see, can be very instructive.

I fear that such analysis can be tedious, and for this I apologize. I will try to be as pithy and compendious as possible, but I am not writing merely to express opinions; I am writing to prove the points I discuss. And I will worry a question like a bull dog, until I am satisfied that I have presented enough hard data to conclusively establish my particular contention, especially in the eyes of those of a different persuasion. For there are intelligent and respected researchers, for whom I have the greatest regard, who do not agree, for example, with my interpretation of the meaning of 'United States' in Title 26, as well as in all the other titles.

The history of the usage of 'United States,' from the time of the American colonies to the present, is remarkably complex. This is thoroughly investigated in an easy-reading yet scholarly book that I highly recommend, by Sebastian de Gracia, *A Country With No Name*, Pantheon, 1997. Herein, however, I will have occasion to avail myself of virtually nothing from this wonderful tome. When I think of this, it astonishes even me. But my focus is primarily on the relevance of this term as it relates to the law, especially tax law, to which he simply doesn't allude…at least in the way I do.

Before getting started, let me give you just a hint as to why it is so extremely important to have an absolutely correct interpretation of the term 'United States,' but also, in the two quotes below, 'nonresident alien,' and 'gross income.'

This preview is an important section from the IRC, which is Title 26, also written in cites as '26 United States Code' or '26 USC,' Section (the symbol § or, often, as in this paper, these are omitted)

> 872 **Gross income:**
>
> > (a) **General rule.** In the case of a nonresident alien individual…gross income includes only—(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and (2) gross income which is effectively connected with the conduct of a trade or business within the United States

Add to this 26 USC 7701(b)(1)(B):

> > An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States…

and I think you will agree that the cardinal conundrum here—indeed the very crux—is the determination as to what is meant by the term ***"United States"*—**and, above, 'nonresident alien.' For,

under certain circumstances we see that the nonresident alien is not subject to any federal income tax—if his relationship to the 'United States' is of a certain nature.

The 'United States' is an abstraction given substantiality when delegated duties began to be performed, and when 1:8:17 of the Constitution was implemented, which provided for land for the seat of government, as well as forts, magazines, arsenals, dockyards, and other needful buildings. Upon thus acquiring land, it also became a geographical entity, as well as a government.

To begin with, one must remember, as the Supreme Court said, "the term United States is a metaphor." (A figure of speech. *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 122. Note that 'U.S.' in a cite like this indicates the U.S. Supreme Court.) The philosopher Jose Ortega y Gassett believes that "[t]he metaphor is perhaps one of man's most fruitful potentialities. Its efficacy verges on magic." But beware, there is black magic as well as white magic. In other words, as Lakoff and Johnson point out in *Metaphors We Live By*, metaphors can create reality for us, and can become symbols that "structure our conceptual system." That is, they can impede the clarity of our thinking. For, as you will see, there are numerous meanings of the term 'United States,' though the government seeks to obscure this.

In the following section, you will see that you should develop the habit of always asking both yourself, and those who speak to you of it, **WHICH** United States**?** O.K., let us begin our Odyssey.

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1. Preliminary remarks on the different meanings of 'United States.'

The lengthy insular cases were settled in 1901, when the U.S. Supreme Court ruled on *De Lima v. Bidwell*, 182 U.S. 1 and *Downes v. Bidwell*, 182 U.S. 244. In the latter, Justice Harlan dissented with the following words:

> The idea prevails with some—indeed, it found expression in arguments at the bar—that we have in this country substantially or practically two national governments; one, to be maintained under the Constitution, with all its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise. (at 380)

Balzac v. Porto (sic) Rico, 258 U.S. 298 (1922) reaffirmed (at 305) that the United States, under 4:3:2 of the Constitution, has exclusive power over the territories outside the union states. It is in no way bound, in its municipal laws, by what Jefferson called the chains of the Constitution. But, also the reverse applies:

> …criminal jurisdiction of the federal courts is **restricted to federal reservations over which the federal government has exclusive jurisdiction** as well as to [federal] forts, magazines, arsenals, dockyards, or other needful buildings. 18 USC 451(3)(d). (Emphasis added.)

It is autonomous within the areas over which it has ***complete*** legislative jurisdiction—the District of Columbia, Guam and the other **federal or territorial States** and enclaves, etc. The 'citizens of the U. S.,' (in this paper lower case 'c' indicates a federal citizen) residing therein, are given 'civil rights,' i.e., statutory and, therefore, retractable **privileges**. They do not have the unalienable rights of state Citizens. In brief, Daniel Webster was ultimately ruled to be right: "The Constitution was made for the states, not the territories."

Two years after the 14th Article of Amendment to the Constitution was said to have been ratified, this very interesting decision was promulgated by the California Supreme Court:

> I have no doubt that those born in the Territories, or in the District of Columbia, are so far citizens as to entitle them to the protection guaranteed to citizens of the United States in the Constitution, and to the shield of nationality abroad; but it is evident that **they have not the political rights which are vested in citizens of the [s]tates.** They are not constituents of any community in which is vested any sovereign power of government. Their position partakes **more of the character of subjects than of citizens**. They are subject to the laws of the [federal] United States, but have no voice in its management. If they are allowed to make laws, the validity of these laws is derived from the sanction of Government in which they are not represented. Mere citizenship they may have, but the political rights of [C]itizens they cannot enjoy until they are organized into a State, and admitted into the [u]nion. *People v. De La Guerra*, 40 Cal. 311, 342 [1870]. (Emphasis added.)

Of course, the **creation of 'citizens of the United States'** dates back to July 9, 1868, when the 14th Article of Amendment was fraudulently declared to be ratified. (Please allow me to remind you of the oft-quoted statement by judge Ellett, of the Utah Supreme Court: "I cannot believe that any court, in full possession of its faculties, could honestly hold that the amendment was properly approved and adopted." *State v. Phillips*, Pacific Reporter, 2nd Series, Vol. 540, page 941-942 (1975).

I must point out that the wording in the 14th Amendment reveals something very important. For it speaks of "***c***itizens of the United States" and "***c***itizens of the state wherein they reside." This is the first time that 'citizen' was not capitalized. Henceforth, lower case usage indicates a federal government subject, termed a 'U.S. citizen.' Not, be it noted, a citizen of any 'land' or country, but, as the courts have ruled, of a government. U.S. citizens are government citizens--which, as you will see, is exceedingly significant. State Citizens are free wo/men on the land.

> The first clause of the fourteenth amendment of the federal Constitution…created two classes of citizens, one of the United States and the other of the state. *Cory v. Carter*, 48 Ind. 427, 17 Am. Rep. 738.
>
> There are, then, two classes of citizens; one of the United States, and one of the state. One class of citizenship may exist in a person without the other, as in the case of a resident of the District of Columbia. *Gardina v. Board of Registrars of Jefferson County*, 48 So. 788, 790, 791, 160 Ala. 155.

In the second sentence of the 14th Article of Amendment of the Constitution of the United States it says: "No State shall make or enforce any law which shall abridge the **privileges or immunities** of citizens of the United States…" (Emphasis added.) Seven years later, the Supreme Court made the distinction crystal clear:

> We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. *U.S. v. Cruikshank*, 92 U.S. 588m 590 (1875)

In 1945, the Supreme Court settled this once and for all in *Hooven &Allison Co. v. Evatt*, 324 U.S. 652—indeed, saying that they wouldn't deal with it again; henceforth, it must simply be given judicial notice. They upheld the *Downes v. Bidwell* case, above, but now **GAVE THREE MEANINGS TO THE TERM 'UNITED STATES.'** (at 671-672) In the instant paper, the primary meaning of "United States" will be that designating territory over which the sovereignty of the corporate United States extends—as granted to this federal agency (i.e., creation) of the union states, under Article 1, Section 8, Clause 17, and Article 4, Section 3, Clause 2, of their Constitution *for* the United States of (i.e., belonging to or originating from) America. The other two meanings designated are a nation among the family of nations, as at the UN, and the collective name of the states united by and under the Constitution (in this case, not including the District of Columbia, etc.). In other words, "the [s]tates united," as it was worded in *People v. De Guerra*, 40 Cal. 311, 337 (1870). Especially the last of these three, is often referred to as the United States *of America*.

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2. Another 'United States of America.'

In January, 1997, Dan Meador and Tim McCrory "tracked down the illusive "United States of America" named principal in all current Federal civil and criminal prosecution. The new entity is a coalition of Federal territories and insular possessions, it is not

[s]tates of the [u]nion." (Internet email-list communication, "Who are IRS & the USA?" of June 15, 2000, by Dan Meador.) They demonstrate the use by the federal government, itself, of the term of art 'the United States **of America**.' If proof were not so incontrovertible—you can look up for yourself—one would dismiss this as a fantastical notion, or a meaningless slip.

Article I of the Articles of Confederation (1777) used the phrase "United States of America." Sometime after 1909 the federal government began using this term, to refer to **an agency of the 'United States.'** One reads on the Federal Reserve Note that it is "legal tender for all debts, public and private, in the United States *of America*." Given that the Federal Reserve Act was enacted as **a municipal law of the District of Columbia** (and, therefore, by the way, perfectly constitutional), it isn't difficult to figure out that the District of Columbia could be at least part of what is referred to as the 'U.S.A.'

On December 7, 1925 Congress set forth 50 titles, "intended to embrace the laws of the United

States…" and yet these titles were designated "the Code of the Laws of the United States **of America**." (Emphasis added. Today there are only 48 titles, since Title 34 **Navy** has been eliminated, by the enactment of Title 10 **Armed Forces**, and Title 6 **Surety Bonds** was repealed, with the enactment of Title 31 **Money and Finance**. But, you still will always read "the 50 Titles.")

The U.S. Constitution, of course, **only delegates authority to the "United States," not the "United States of America."** The United States is an agency ***of*** the U.S.A.—not the other way around. The first sentence of Article I states: "All legislative Powers herein granted shall be vested in a Congress of the United States, which…" Article II, Section 1 speaks of "the Government of the United States." And Article III, Section 1 begins: "The judicial Power of the United States, shall…"

The distinctness of these two entities is incontestably made evident in the 1934 edition of *The Code of the Laws of the United States of America*, Title18 § 80**.** (Criminal Code,

§ 35, amended.) **Presenting false claims.**

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States **of America** is a **stockholder**, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States **of America** is a **stockholder**, knowing such claim to be false, fictitious, or fraudulent; or whoever shall by any trick, scheme, or device a [sic] material fact, or statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency or the United States or of any corporation in which the United States **of America** is a stockholder shall be fined not more than $10,000 or… (Emphasis added. A stockholder?!?!)

Or, also, 28 CFR, § 0.96(b) **Exchange of prisoners**:

The Director of the Bureau of Prisons and officers of the Bureau of Prisons designated by him are authorized to receive custody of offenders and to transfer offenders to and from the United States **of America *UNDER TREATY*** as referred to in Public Law 95-144; to make arrangements with the States and to receive offenders from the [federal] States for transfer to a foreign country [such as Ohio] to act as an agent of the **United States** to receive the delivery from a foreign government [say, Vermont] of any person being transferred to the **United States** under such a **treaty**…

This makes unmistakable the fact that **two independent and discrete geographical jurisdictions, foreign to one another**, **AND UNDER TREATY WITH EACH OTHER**, are being referred to. Furthermore, 18 USC § 1001 historical notes, together with § 6, unassailably prove that the **United States *of America* is a creation, an instrumentality, an agency of the**

United States, and/or a political subdivision thereof. It could be the District of Columbia and/or a compact of the insular possessions of the U.S., subject to the territorial clause at 4:3:2 of the Constitution. Indeed, I like Dan Meador's idea that it might better be described as the **'Federal United States of America'**—which distinguishes it from the Preamble U.S.A.

In the historical notes to the current 18 USC § 1001 we find:

Words "or any corporation in which the United States **of America** is a stockholder" in said § 80 [of the 1940 ed. of the USC] were omitted as unnecessary in view of definition of "**agency**" in § 6 of this title. (Emphasis added.)

Section 6 says:

The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation **in which the United States has a proprietary interest**…

All of this recalls to mind the Declaration of Independence of 1776:

He [King George] has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended legislation….altering fundamentally the Forms of our Government…

Unaware of this shattering state of affairs, many people include "*of America,"* in their speech and writings, in an effort to avoid all ambiguity—as indeed the federal government does itself, in an extremely noteworthy and striking example. It involves the wording of the two perjury jurats, found in Title 28 **Judiciary and Judicial Procedure** Section 1746:

(1) If executed ***without*** (outside) the [federal] United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States ***of America*** that the foregoing is true and correct. Executed on (date). (Signature)" (Emphasis added.)

(2) If executed ***within*** the [federal] United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)" (Emphasis added.)

"If executed without the United States…" doesn't mean in Moscow; it means any place in the 50 union states that is not a federal zone, like D.C., an airforce base, or Guam. It would have been possible to include in (2) "under penalty of perjury under the laws of the United States,"—leaving out 'of America'—but that would have got people thinking about the difference between the U.S. and the U.S. of A….and that **maybe they were swearing under the laws of a foreign jurisdiction!**

They **are**, of course, but it is a particular kind of law; it is special, private, corporate, contract law

—with the 27 non-positive law titles of the 48, which are the corporate bylaws, **having little or no necessary legal force and effect on the general population**—**UNLESS** there is some legal adhesionment, like signing a 1040 Label Form. (The term 'label' is on the form, some say, because you are affixing your 'seal.')

The jurat on this form does not exactly follow the wording of 28 USC 1746(2), above, as some people seem to think. The Form 1040 says "Under **penalt*ies*** of perjury, I declare…" The reason for this dissimilarity is because a federal employee or official may be tried and penalized twice. The second penalty is loss of benefits for life, if impeached and convicted…because of having taken an oath of office. Remember, an oath establishes jurisdiction…indeed, the word means 'oath spoken.' For example, even though you haven't filed a tax return for decades, the government will 'presume' that you still believe yourself to have a duty to do so—unless you have rebutted this presumption by a cancellation of the oath you took on signing your first Form 1040 jurat—see 26 USC 6013(g)(4) **Termination of election** (A) Revocation by taxpayers.

By claiming to be a U.S. citizen, for tax purposes, way back when you were 14, you became, in the eyes of the IRS, a '***federal person***,' a de jure (by oath) non-compensated federal employee. For after all, *jurato creditur in judicio*, he who swears an oath is to be believed in judicial proceedings.

And you can now commit yourself to this jurat on-line. That is, once you have declared yourself to be a taxpayer under penalty of perjury on Form 8453-OL, and mailed it to the IRS. (On-line signatures permitted after October, 2000.) Thereafter, using the Declaration Control Number (DCN) they provide, all your 1040s or 1099s are considered to be signed under oath. And, for your convenience, this authorizes access to you bank account or credit card for direct withdrawal. How thoughtful! Thirty three million DCNs were provided last year. They are aiming at 80% of all tax returns to be filed electronically, by 2007.

I can't recall any criminal prosecution involving federal income taxation where there was not a signed tax form in evidence, or referred to…albeit of many years previous. And, the judge will say openly—but mostly to deaf ears—that if you don't disavow (un-swear) that you are a 'United States person' (26 USC § 7701(a)(30)) you can be found guilty of failure to file.

Unless the defendant can establish that he is **not a citizen of the [District] United States**, the IRS possesses authority to **attempt** to determine his federal tax liability.
U.S. v. Slater, 82-2 USTC 9571. (Emphasis added.)

As Templeton **does not dispute that she is a citizen of the [District] United States**, and because the Code imposes an income tax on 'every individual who is a citizen or resident of the [District] United States,' 26 CFR 1.1-(1)(a), it would clearly contradict the 'plain meaning' [see section 14, below, by that title] of the term to conclude that Congress did not intend that Templeton be considered a 'taxpayer' as the term is used throughout the Code. *Rachel Templeton v. IRS*, 86-1363 on appeal from 85 c 457. (Emphasis added.)

For, every federal indentured servant, subject, slave, 'individual,' 'employee,' and 'official' has an undisputed duty to file a tax return…being a *homo fiscalis*, 'a vassal belonging to the treasury'—being an *alieni juris*, one under the control of, or subject to the authority of, another… opposite to a freeman in *sui juris*, one possessing all his natural, social, and civil rights, not under anyone else's guardianship or control. In other words, s/he is *capax negotii*, competent to transact his or her legal affairs. Or, one could say, one who has *rectus in curia*, right in court, one who can benefit from the law—unlike the 'outlaw' or slave. That is, legally being able to act for him/herself…namely, having the legal capacity, ability, and power to manage his/her own affairs, as opposed to someone having relinquished his/her power of judicial action, by giving up his/her power of attorney, and becoming, thereby, a 'ward of the court.' That is, someone considered of unsound mind and under the care of a guardian.

Truly unbelievable! One is reminded of a remark by Judge Bork, to the effect that 90% of those in prison are there voluntarily—i.e., by consent and permission! (You notice that he was not confirmed as a Supreme Court Justice!) Which brings to mind a Supreme Court case, in 1794, where one reads that:

The only reason, I believe, that a free man is bound by human law, is, that he binds himself. *Chisholm v, Georgia*, 2, Dall 440, 455.

Before leaving discussion of the semi-statutory 'U.S.A.'—I say 'semi' because it was never enacted into actual law, just treated as though it were a *fait accompli*, a done deal, and never discussed. There is a great deal to be said about this subject; however, I will keep it short. Interested parties must go to Dan Meador's most recent writings for a more full treatment—for example "Agents of a Foreign Government: A Bizarre Saga," written April 5, 2000.

I am going to skip over the very important relationship of the IRS with its predecessor, the BIR (Bureau of Internal Revenue, Puerto Rico), starting back in 1900. Here, as briefly as possible, I am going to touch on two very recent monumentally important events.

The first dates to January 24, 2000, where United States Attorney, Betty H. Richardson, responded to a complaint for impleader by the attorney John M. Ohman, for Cox Ohman & Brandstetter, Chartered, "in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville Magistrates Court" (Case No. CV93-4117). The point is that Ms. Richardson responded to the 4th item of the complaint with the earth-shocking statement that—and I have a court copy in front of me: "4. **Denies that the Internal Revenue Service is an agency of the United States Government**[,] but **admits that the United States *OF AMERICA* would be a proper party to this action**…." (Emphasis added.) I agree with Dan Meador that: "The Internal Revenue Service operates as an agent of this come-lately geographical and political alliance know[n] as the United States **of America**, Puerto Rico being a party to the compact"…though there hasn't been space enough here to properly substantiate that statement. This is but a sketch.

In boxing they speak of the 'one, two punch.' Well, here is the second punch…the coup de grace. Michael Bufkin sent a FOIA request on December 18, 1998 to the Department of the

Treasury, "for documents that evidence the authority of the U.S. Attorney General's Office to defend IRS agents in a civil or criminal matter." This is a quote from the government's response, on August 2, 1999: "A search was performed with the Office of Tax Crimes (Criminal Investigation) and with the Assistant Chief Counsel (Disclosure Litigation) and we have no documents responsive to your request." (Emphasis added.)

He then FOIAed the U.S. Department of Justice (Criminal Division), on September 21, 1999, and received a reply on Jan 11, 2000, stating that "we did not locate any records responsive to your request…" (Emphasis added.) from the Chief FOIA/Privacy Act Unit Office of Enforcement Operations Criminal Division.

This is staggering in its implications!…or, perhaps '**indications**'—for it doesn't imply anything; it clearly states in black and white: the United States Government has no authority to defend in court any employee of the IRS…**for they are not employees of the U.S. Government!!**

So, there we have it. The latest 'cutting edge news'…the IRS is not, in the strict governmental sense of the term, an 'agency,'—though it is hired out by the government, like a janitorial service. So there is not anything inconsistent with the fact that they get checks from the Department of Treasury. Just as the company that paints one of their buildings or repairs their toilets. It means nothing, where the check comes from.

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3. The territorial, federal, District, corporate 'States' or 'United States'

In this paper, I will often qualify 'United States' and 'State' by placing in brackets before them one or more of the following: territorial, federal, District, or corporate. I realize that these words are not synonymous, but I often use the first one that comes to mind…except, sometimes, to make a slightly different stress, in a particular context. I do this to point out the distinctness of the particular use of 'U. S.,' in the given quotation, from the common understanding of its meaning, as standing for the whole nation of the 50 states, together with the federal zone.

In case anyone has trouble with considering the 'U.S.' a corporation, s/he will find this case, decided in 1823, of interest:

> The United States is a government, and, consequently, a body politic and corporate…This great corporation was ordained and established by the American people… (*United States v. Maurice*, 26 Fed. Cas. No. 15, 747, 2 Brock 96, Circuit Court, D. Virginia)

Also, in the Clearfield case, of 1943, the Supreme Court quotes the very early *Penhallow v. Doane*, 3 Dall 55, where it was stated that "[g]overnments are corporations."

The Corpus Juris Secundum § 2 states:

> When the United States enters into commercial business, it abandons its sovereign capacity and is to be treated like any **other** corporation. (Emphasis added.)

But, more current and interesting is the cite from 28 USC 3002, which states that 'United States' has several other meanings, as well:

> (15) "United States" means—
>
> (A) a **Federal corporation**;
>
> (B) an agency, department, commission, board, or other entity of the United States; or
>
> (C) an instrumentality of the United States. (Emphasis added.)

As for 'territory':

> [It's] a part of the country separated from the rest and **subject to a particular jurisdiction**. A portion of the country **subject to and belonging to the [District] United States** [Government] which is not within the boundary of any state or the District of Columbia. (262 U.S. 122. Emphasis added.)
>
> A territory is not a sovereignty. Such legislative powers as it may possess are delegated powers which may be granted or withheld at the will of Congress." *Territory v. Alexander*, 11 Ariz. 172, 89 P. 514 (1907).

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4. 'Person.'

I have used the term '**person**' a number of times, and I believe it deserves some special attention. It derives from the Latin 'persona,' an actor's mask, used in Greek and Roman times for two purposes… to identify the stage character—for one actor often played more than one role, so he would simply switch masks—and to project his voice by means of a megaphone-shaped mouth…per sona, by sound. Hence, our word 'personality,' that about ourselves which we project to others. In some, more than others, a presentation that indeed masks our true character or nature. In the Middle Ages it came to be used as synonymous with 'homo,' man or individual. This was not the case in ancient (and modern) Roman law. As one legal historian put it:

> *jus personarum* did not mean law of persons, or rights of persons, but law of status, or condition. A person is here not a physical or individual person, but **the status or**

> **condition with which he is invested**. (34 Austins Jur., 363. Emphasis added.)

In the 15th century, "person came to be used in legal terminology for one (as a human being, a partnership, or a corporation) that is recognized by the law as **the subject of rights and duties.**" (*Merriam-Webster's New Book of Word Histories*, 1991. Emphasis added.) Note here that it is only the 'human being' in his person, as a subject of rights and duties. As Ortolan says, in his *History of the Roman Law*:

> The word 'person' (persona) **does not in the language of the law, as in ordinary language, designate the physical man**. In the first, it is every being considered as capable of having or owing rights, of being the active or passive subject of rights.
>
> We say every being, for men are not alone comprised therein. In fact, law by its power of abstraction creates persons….because it makes of them beings capable of having or owing rights….
>
> We shall therefore have to discriminate between, and to study, two classes of person: physical or natural persons, **for which we find no distinctive denomination in Roman jurisprudence**…; that is to say, the man-person; and abstract persons, which are fictitious and which have no existence except in law; that is to say, those which are purely legal conceptions or creations.
>
> In another sense, very frequently employed, the word 'person' designates each character man is called upon to play on the judicial stage; that is to say, each quality which gives him certain rights or certain obligations—for instance, the person of father; of son as subject to his father; of husband or guardian. In this sense the same man can have several personae at the same time. (Emphasis added.)

The Internal Revenue Code is Roman or civil law, together with its sibling, maritime or admiralty law. Thus, as I discuss below, the Supreme Court clearly states that all income taxes are on corporations, as set forth in the Corporation Tax Act of 1909, **not on people**. That is why all 48 titles always speak of persons, never people, human beings, or men or women; a fiction can only deal with a fiction.

This was made clear even before the Constitution, in *The Federalist Papers*, No. 15:

> Except as to the rule of apportionment, the United States have an indefinite discretion to make requisitions for men and money; but they have **no authority** to raise either by regulations extending to the **individual citizens of America.** (Emphasis added.)

Let me put a little flesh on these bones. The Supreme Court stated in *Edwards v. Cuba RR Co.*, 268 US 628 that:

> …the meaning of 'income' as used in the Corporation Excise Tax Law of 1909 is not to

> be distinguished from the meaning of the same word as used in the Income Tax Law of 1913 and the Revenue Act of 1916. *Merchants' Loan & Trust Co. v. Smietanka* 255 US 509. (Emphasis added.)

However, as pointed out by Kenneth Weiland, it is of interest to note, also, a Federal Claims Court case, *Maryland Casualty Co. v. U.S.*:

> By the act of August 5, 1909, a special excise tax was imposed upon the privilege of carrying on business by corporations. **It was in reality a license to carry on business**…. The Income Tax Act of October 3, 1913, should be considered as a **statutory construction of the act of August 5, 1909, in so far as it related to the basis of taxation.** (December Term, 1916-17 [52 C. Cls.] Emphasis added. This will take on further meaning toward the end of this paper.)

Be it noted that in the California Penal Code 'person' is clearly distinguished from 'Citizen.' Penal Code § 228 states: "Any ***citizen*** of this state who shall fight a duel…" While at § 232 it states: "Any ***person*** of this state who fights a duel…" (Emphasis added.)

> "In common usage, the term 'person' does not include the sovereign…[and] statutes employing the [word] are ordinarily construed to exclude it." *Wilson v. Omaha Indian Tribe*, 442 U.S. 653, 667 (1979), quoting *United States v. Cooper Corp*. 312 U.S. 600, 604 (1941).

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5. 'Individual.'

The term of art '**individual'** is also frequently employed in the codes. Which is even more sneaky, because most people believe this word to be, for all intents and purposes, synonymous with 'a human being'…what the law refers to as a 'natural person.' Roman law hardly referred to such a physical being, except the rare usage of *singularis persona*—which, however, still employs 'persona,' thereby preserving a juridical nexus, inapplicable to a sentient man (*homo*). An abstract, fictitious 'person' is needed. Recall Judge Bork, on page 11, above, saying that 90% of those in prison were there because they consented to the process? You consent when you agree to be subject to a statute dealing with persons—which we have seen to be fictional corporate constructs or entities. The code—any of the 48 titles—only applies to a human being at the point s/he agrees to take on the character, status, persona of an artificial juristic persona. Always remember that when the code says "…any person," it means "any person in the jurisdiction of this code." **One obligates oneself** to the civil code by an act of assumpsit… i.e., volunteering to be that 'person.' (Assumpsit: "A promise or engagement by which one person assumes or undertakes to do some act or pay something to another." *Black's Law Dictionary*, 6th edition. Recall the Chisholm case, above.) You will **never** see in any code, State or federal, the word 'man' or 'woman'…or 'people'—at least I don't recall having done so—only the juristic, statutory 'person.'

People are understandably confused about on what I believe to be the correct signification of a particular class of persons, namely, a '**natural person**.' It is almost always used loosely to refer to the physical, sentient human being. Indeed, in statutory law this is the term of choice for a living man—but always in a qualified sense. At 26 CFR 1.6049-4(f) **Definitions** we read:

> The term natural person means **any individual**, but shall not include a partnership (whether or not composed entirely of individuals), a trust, or an estate. (Emphasis added.)

Notice carefully how they see it as both **possible and necessary** to qualify 'individual.' If this term stood for a living man, it would be pointless and ridiculous to say that it could not be a trust or an estate! They wouldn't say that a man shall not include an estate.

So then, we see that 'person,' 'natural person,' and 'individual' are all fictitious legal creations. And, if you acquiesce to being any of them, in a legal setting, you thereby agree that the code addresses and applies to you.

This is why some have an aversion to referring to their appearance in court as being *'in propria persona'*…which some do to avoid pleading *pro se*, 'for oneself,' when appearing without an attorney. They don't want to represent themselves, but be themselves. And, since *'in propria persona'* means 'in one's own proper person,' it would seem to overcome this objection. Be this as it may—and I am aware of many arguments pro and con—the court still refers to your appearance as being *pro se.* Personally, if I found myself in that situation, I would appear *in rerum natura*, 'in the realm of actuality; in existence,' (*Black's Law Dictionary*, 6th edition) the opposite of being a fictitious person.

We should look, too, at the very first term in the general definition chapter for the entire IRC: Section 7701(a)(1)—and well they should begin there, for **all** statutory law rests on the foundation of this juristic fabrication.

> **Person**. The term 'person' shall be construed to mean and include an individual, a trust, estate, partnership, association, company, or corporation.

Therefore, since we now know that, in law, 'person' can not be anything but a fictitious juridical creation, it follows ineluctably that if 'individual' is said to mean the exact same thing, then it must also refer to the same type of unnatural and artificial entity as 'person.'

This is pretty well nailed down by a couple of cites from the CFR. At 5 CFR 582.101(4) we read:

> Persons may include an individual, partnership, corporation, association, joint venture, private organization **or *other* legal entity**, and includes the plural of that term; person may include any of the **entities** that may issue legal process as set forth in… (Emphasis added.)

In 7 CFR 400.303(m) we find:

> Person means an individual, partnership, association, corporation, estate, trust, **or other legal entity**, and whenever applicable, a State or a political subdivision, or agency of a State. (Emphasis added.)

Here it is in the regulations, an individual is a 'legal entity,' not a (wo)man, a sentient human being.

So, it makes perfect sense that 5 USC 552a(a)(2) should hold that "the term '**individual'** means a **citizen of the United States** or an alien lawfully admitted for permanent residence; (3)…" (Emphasis added.) For a 'citizen' is certainly a juristic 'person.'

A discussion of 'person,' however, would not be complete without reference to 26 USC 7343 **Definition of term "person."** This is at the very end of Chapter 75 **Crimes, Other Offenses and Forfeitures,** which includes such goodies as § 7203 **Willful failure to file return, supply information, or pay tax,** which begins: "Any person required under this title to pay…" (Emphasis added.)

Section 7343 reads in its entirety:

> The term 'person' **as used in this chapter** includes [is restricted to] an officer or employee of a corporation [such as the U.S. or some company incorporated in the federal zone], or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect to which the violation occurs.

For starters, Section 7203 is a ***penalty section*** and makes no attempt to establish any liability. Plus, the implementing regulations are in Title 27 BATF…meaning that it is exclusively for their use, with excise taxes! It has nothing to do with the IRS. Leaving all that aside, do you believe that you could be charged as being the person described above? Do you work for the federal government or a domestic (U. S., not State) corporation?

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6. 'The 50 States,' 'the several States,' and 'the federal States.'

It is exceedingly noteworthy that in the several thousand pages of the Internal Revenue Code reference is only made to "**the 50 States**," on two occasions…at which times it is legally required to do so. The first, 4612(a)(4)(A), reads:

> In general. The term 'United States' **means** the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. (Emphasis added.)

Which indicates that the code lawyers know how to be lucid when they wish to…also, note that they

use 'means' rather than 'includes.'

The second, 6103(b), is somewhat different:

> (5) **State.** The term 'State' means--
> (A) any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands…

They share, however, the clear reference to the 50 States, and they both use 'means,' rather than 'includes,' or other gobbledygook, such as found in the IRC's general definition of 'State' at § 7701 (a)(10), which I analyze in section 7.

I found there are at least three other occasions, however, when they use the phrase '**several States**,' in referring to the union states—5272(b), 5362, and 7462.

However, some people mistakenly believe that 'several States' **always** means the 50 States—partly because the Declaration of Independence uses the phrase several times.

Not so! More than one constitutes 'several,' and the government usually, though not always, uses the word to lead you to infer their meaning as being the union states. (The phrase 'several States' is not a term of art and, therefore, can be used loosely, not being defined in the code.) The fact, however, is that the federal government **almost always** is making reference to **the federal States**, when it employs the phrase 'several states.' This can be demonstrated by reference to many documents, such as the Congressional Quarterly. But one of the best sources is the Hawaii Omnibus Act, a compilation of all the alterations to the codes and Statutes at Large made necessary by Hawaii's admission to the union. For example:

> Sec. 10. Section 2 of the Act of September 2, 1937 (50 Stat. 917), as amended, is further amended by striking out the words '; and the term "State" shall be construed to mean and include the several States and the Territory of Hawaii'. (Emphasis added.)

As established above, 'State,' here, cannot possibly make reference to the union states, for it included the Territory of Hawaii. Therefore, 'several States,' here, **must** refer to the federal States.

Like reasoning applies to another section from this Act:

> Sec. 3. Section 113 of the Soil Bank Act, as amended, is amended to read as follows: 'This subtitle B shall apply to the **several States** and, if the Secretary determines it to be in the national interest, to the Commonwealth of Puerto Rico and the Virgin Islands; and as used in this subtitle B, the **term 'State' includes [only—see analysis of the term 'includes' below] Puerto Rico and the Virgin Islands**.' (Emphasis added.)

It is obvious that Puerto Rico cannot be a 'State,' the same as Oklahoma; therefore, once again, it must

be a different species of 'State'…**a federal State**.

Title 31, Money and Finance, no longer contains Part 51, Financial Assistance to local governments, and Part 52, Antirecession, Fiscal Assistance to State, Territorial and Local governments. I located a different law library this morning that had some old CFRs, and went there in order to verify the quotes below…in a July 1, 1992 edition. I will include a couple of items that are not directly relevant, but they help flesh out the picture of the two different governments involved.

Subpart A—General Information.

§ 51.2 **Definitions**. (c) *Department* means the Department of the Treasury.

§ 52.2 **Definitions**. (c) *Department* means the Department of the Treasury.

* * *

§ 51.2(i) *Governor* means the Governor of any of the 50 **State** governments or the Mayor of the District of Columbia.

§ 52.2(f) Governor means the Governor or any of the 50 **states** and the chief executive officer of the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam, and the Virgin Islands of the United States.

* * *

§ 51.2(o) *Secretary* means the Secretary of **the Treasury**.

§ 52.2(n) *Secretary* means the Secretary of **the U.S. Department of the Treasury.**

* * *

§ 51.2(q) *State government* means the government of any of 50 **State** governments or the District of Columbia.

§ 52.2(o) *State government* means government of any of the 50 **states**.

* * *

§ 51.2(r) *Unit of local government*….The District of Columbia, in addition to being treated as the sole unit of local government within its geographic area is **considered a [federal] State.**

§ 52.2(i) *Local government*….The term local government includes the District of Columbia. (Text emphasis added.)

By way of brief comment, on a 'dollar bill' you will see a green seal inscribed "THE DEPARTMENT OF THE TREASURY 1789;" no reference is made to the "U.S. Department of the Treasury." But then there are a maze of 'treasuries' to be found in the laws of the U.S. Of course, in the Constitution we only find "the Treasury of the United States." This was drastically changed by the Independent Treasury Act of 1921, which I won't go into. One can get some idea of the present hodge-podge by looking at the Bretton Woods Agreements Act, as seen in P.L. 94-564, p.19:

> Section 9 of the bill would also delete the reference in Section 14(c) of the Gold Reserve Act to the 'Treasurer of the United States" and substitute therefor the "United States Treasury". This substitution reflects Reorganization Plan No. 26 of 1950 (31 U.S.C. 1001, note) and a reorganization within the Fiscal Service of the Treasury Department, effective February 1, 1974. All accounts of the "Treasurer of the United States", including accounts relating to gold held against outstanding gold certificates, now are accounts of the "United States Treasury". The Department of the Treasury proposes to amend or repeal other statutes, as and when appropriate, to make similar substitutions in the law. (Emphasis added.)

And there are more treasuries not mentioned here.

And the difference between 'State' and 'state' must certainly have caught your attention…which distinction I use throughout this paper.

And, lastly, on these quotes from Title 13, it is put forth that the District of Columbia is to be "considered a State." Well, it so happens that the Supreme Court dealt thoroughly with this matter in *O'Donoghue v. United States*, 289 U.S. 516 (1933). It stated four conclusions dealing with the relationship between the union states and the District of Columbia and the territories. Three of them spoke of certain regards in which these latter were not states, but one enunciated a sense in which they could be termed 'states': "3. That the District of Columbia and the territories **are states as that word is used in treaties with foreign powers, with respect to the ownership, disposition, and inheritance of property,** 4…" I thank Jerry Brown, Ed. D., for this research, and his observation that this was why the territories were termed 'states' in the treaty with Spain. He terms them 'inchoate states.' *Black's Law Dictionary*, 6th edition, defines 'inchoate' as "imperfect; partial; unfinished; begun, but not completed…" (It defines 6 inchoate items, but not a state. So perhaps this is Jerry's felicitous phrase. I like it.) Incidentally, the U.S. most certainly has tax treaties with the union states—which are admitted to be foreign countries, as I will cite later—just as it does with a couple of dozen other countries.

To this point I have quoted the codes and statutes. Next, I will call attention to a federal court's rather recent landmark decision, which very few know about. Then finally, we will see what a Congresswoman and the Congressional Research Service have to say—which would seem to cover the matter from about all angles.

The United States District Court for the Virgin Islands decided a very important case, in 1996. It was a petition for redetermination of tax liability, Docket number 96-146, filed July 12, 1996, cited as: *Burnett v. Commissioner* [of Internal Revenue], KTC 1996-292 (D.V.I. 1996). The court stated that

Subtitle A taxes apply only to Washington, D.C. and the territories!!. They cited 26 USC 7701(a)(9), the general definition of 'United States,' and § 7701(a)(10), the definition of 'State'—which, as can be seen, they interpreted as I have in this paper!

Extremely important, also, is a letter that Congresswoman Barbara B. Kennelly, from Connecticut, sent on January 24, 1996. I have a fax copy of the original, and will quote it, in pertinent part.

> In your letter you asked if Section 3 (a) of H.R. 97 [which she introduced] defining the word state, and 26 U.S. Code 3121 (e) are the same. I have checked with Legislative Counsel and the Congressional Research Service about the definition. According to these legal experts, the definitions are not the same. The term state in 26 U.S. Code 3121 (e) **specifically includes only the named territories and possessions** of the District of Columbia, Puerto Rico, the Virgin Islands, Guam and American Samoa." (Emphasis added.)

The Congresswoman is referring to 26 CFR 31.3121(e)-1 **State, United States, and citizen** [revised, below, April 1, 1999] where it states that:

> (a) When used in the regulations in this subpart, the term ``State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Territories of Alaska and Hawaii **before their admission as States**, and (when used with respect to services performed after 1960) Guam and American Samoa.
>
> (b) When used in the regulations in this subpart, the term ``United States", when used in a geographical sense, means the **several states** (including the Territories of Alaska and Hawaii **before their admission as States**), the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. When used in the regulations in this subpart with respect to services performed after 1960, the term ``United States" also includes Guam and American Samoa when the term is used in a geographical sense. The term '**citizen of the United States**' includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January **1**, 1961, a citizen of Guam or American Samoa. (Emphasis added.)

How could it possibly be more clear…that here, at least, 'the several states' **refers to the federal States only?!** A legal maxim expresses the obvious: *verbis standum ubi nulla ambiguitas*, one must abide by the words when there is no ambiguity.

There is an instructive exception to this usage at 4 USC 112(b):

> For the purposes of this section [**only!**], the term 'State' means [not bothering to attempt dissimulation by using 'includes'] the several States ***and*** Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia. (Emphasis added.)

As this section must, by the nature of its subject matter, make reference to the 50 states, as well as the federal zone, it doesn't hesitate to use words that make its meaning unambiguous. Of course, it is still shying away from the—with one exception, at 26 USC 6103(b)(5)—unique forthrightness of 26 USC 4612(a)(4):

> **United States.** (A) In general. The term 'United States' **means** [not 'includes'] the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States [Guam, American Samoa, and the Virgin Islands], the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. (Emphasis added.)

In Title 4 § 112(b), above, Congress needed to make reference to the 50 states, so it puts 'and' after 'several States,' instead of a comma, as it would do otherwise. In the government's usual usage, items following the comma are **examples** of what precedes it, not items in **addition** to it, as you are fostered into believing. For example, "…General Motors cars, Buick, Chevrolet, Pontiac, Oldsmobile, and Cadillac." 'General Motors' is not one of the list; **it incorporates the ensuing listed items**.

This is a stratagem used when defining the federal U.S. by example, as in 26 CFR 1.911-2(g) **United States**:

> The term 'United States' when used in a geographical sense includes any territory under the sovereignty of the United States. It includes the States, [comma—meaning, 'which are comprised of'] the District of Columbia, the possessions and territories of the United States… (Emphasis added.)

There is, then, one thing always to keep in mind when reading the code. With a few exceptions like those mentioned above, **it never does, it never needs to**, **nor can it ever refer to the union states and the population at large**. It is **private contract 'law'**—i.e., when you sign something mentioned in the code, like a Form W-4, it **then, and thereby,** takes on the force and effect of law. Without such adhesionment, it has, except for the 17 areas clearly spelled out in 1:8 of the Constitution, as much relevance to a Citizen's life as the rules at Sears, if one doesn't work there.

In the lengthy quote of 26 CFR 31.3121(e)-1, on the preceding page, it concluded:

> The term '**citizen of the United States**' includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January **1**, 1961, a citizen of Guam or American Samoa. (Emphasis added.)

The definition is only for Chapter 21—**Federal Insurance Contributions Act**, of Subtitle C—**Employment Taxes and Collection of Income Tax**, where Section 3121**, Definitions,** states at (b) **Employment:**

> For purposes of this chapter, the term 'employment' means any service, of whatever nature, performed…(B) **outside the United States [in Minnesota or New Hampshire]**

> **by a citizen** or resident **OF THE UNITED STATES** as an employee for an **American employer** (as defined in subsection (h))… (Emphasis added.)

a. **American employer.** For purposes of this chapter, the term 'American Employer' means an employer which is—

1. **the United States or any instrumentality thereof** [which includes States and Municipalities, but not Counties—see 26 CFR 301.6331-1(a)(4)],

> (2) an individual who is a resident of the [District] United States…

Consequently, it is of crucial import to determine exactly what the meaning of the term 'United States,' and a 'citizen of the United States' is, for the above chapter 21. For two conditions must obtain before one can be liable for employment tax: 1) one must be a citizen or resident of the United States **and** 2) one must be an employee of an 'American employer,' which is to say, for the most part, a federal, State, or Municipal government.

One readily knows, of course, whether 2), above, applies. If you work for Macy's, you are home free, in that department. And, from the unassailable investigation of the Legislative Counsel and the Congressional Research Service, as seen in Congresswoman Kennelly's letter, above, we know that for the purposes of chapter 21, Employment Taxes, **exactly** what is being termed the 'United States' and a 'citizen of the United States.' So, unless you perjure yourself by claiming that you are a U.S. citizen (i. e., for tax purposes), then this condition doesn't obtain. **Both** situations, above, must exist or you are not subject to employment tax. If both of these conditions are not present, then 26 USC 3402(p) "**Voluntary withholding agreements**" (underline added) comes into play, and you are only part of the game ***IF*** you and your boss voluntarily agree to do so. Read it!! The ignoring of this crystal clear section by workers, and the flouting of it by the government, is one of the great mysteries and tragedies, on the one hand, and one of the most vile and despicable agendas on the part of the IRS, on the other.

At least one researcher has a problem with an aspect of this, however, for he says that this chapter only gives a geographical definition, and, in his opinion, "'citizen' connotes a political sense."

Without going into it too deeply, just let me quote the last paragraph of 26 USC 3121(e) **State, United States, and citizen**:

> An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) **shall be considered**, for **purposes of this section**, **as a citizen of the United States**. (Emphasis added.)

Now I don't see any distinctions here between a political citizen and a geographical citizen. Congress is simply stating, for tax purposes in, a given context, who they considered to be a citizen. the fact is that **THERE IS NO SINGLE STATUTORY 'UNITED STATES.'** There are numerous definitions of that term in the 48 codes, and certainly in Title 26. I give a number in this paper. As an extreme example take § 927(d), which says: "For the purposes of this subpart [of only 6 sections]…(3) **United States**

defined. The term 'United States' includes [only—see section 18] the Commonwealth of Puerto Rico." On the other hand, in Section 4612(a)(4), above, you have every conceivable place included—with dozens of shades in between.

The fallback or default definition for the whole IRC is § 7701(9), which speaks of the federal States and the District of Columbia. In other words D.C., the territories, and enclaves, such as military bases. Though I know of one researcher who would exclude the territories, for chapter 21, and proposes that there 'citizen of the United States' means citizens of the District of Columbia, the enclaves, and citizens of the Commonwealth of Puerto Rico. Sorry, but this flies in the face of the Kennelly letter. Questioning the Congressional Research Service just isn't done…at least I have never heard of it. They, and the GAO, are as impartial and unbiased as it is possible to get in the federal government. Neither has an ax to grind. It's actually really heartening.

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7. 'State.'

There is another tack, on coming correctly to understand what the codes mean by "**State.**" In the IRC, chapter 79 **definitions** applies to the entire title, unless specified otherwise in a given chapter or section. At Section 7701(a)(9) we read:

> **United States.** The term 'United States' when used in a geographical sense includes only the States and the District of Columbia.

OK, but what states? The next subsection, § 7701(a)(10), supposedly is intended to answer this:

> **State**. The term 'State' shall be construed to include the District of Columbia, where such construction is necessary to carry out the provisions of this title.

Before analyzing this definition, it is very instructive to trace its development. It all began on June 30, 1864, when Congress enacted its first formulation.

> The word 'State,' when used in this Title, shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out its provisions. (Title 35, Internal Revenue, Chapter 1, page 601, Revised Statutes of the United States, 43rd Congress, 1st Session, 1873-1874.)

When Alaska was admitted into the union, in 1959, IRC 7701(a)(10) was amended by striking out "Territories" and substituting "Territory of Hawaii."

Then, when Hawaii was admitted, we read in the Hawaii Omnibus Act, 2nd Session, Volume 74, 1960, at Section 18:

> (j) Section 7701(a)(10) of the Internal Revenue Code of 1954 (relating to [the] definition of 'State') is amended by striking out 'the Territory of Hawaii and'.

So, after the only two incorporated federal Territories/States left the fold, only the District of Columbia remains as an example…which presents a problem. For, the Supreme Court ruled in *Hepburn & Dundas v. Ellsey*, 6 U.S. 445, 2 Cranch 445, 2 L.Ed 332, that within the meaning of the Constitution, the District of Columbia is not a "state." Therefore, **we know that we are dealing with a different animal here**. And, as the 50 states are not mentioned, they cannot be referred to. *Inclusio unius est exclusio alterius*—to include the one is to exclude the other, is an accepted maxim of law (if that's not a pleonasm).

It is really quite simple. Look at the IRC after Alaska had been admitted as a union state, in January, 1959. It **then** reads, at § 22(a) of the Omnibus Acts of the 86th Congress 1st Session, Volume 73, 1959:

> …and sections 3121(e)(1) [see the Kennelly letter, above], 3306(j), 4221(d)(4), and 4233 (b) of such code (**each relating to a special definition of 'State'**) are amended by ***striking out 'Alaska.'*** (Parentheses in original. Emphasis added.)

This was done again, when Hawaii joined the union, in August, as we read, above.

Of course, the definition of 'United States,' at 26 USC § 7701(a)(9), must also be changed, and is, in the preceding subsection, (i), where "the Territory of Hawaii" is struck out. **For it no longer belongs to the U.S. It is now not a federal State**, but a free union state. I would truly like to hear how anyone can gloss this over! But keep reading; it gets better.

The above Act supplies a great number of amendments similar to the following:

> Sec. 14. (a)(1) Subsection (a) of section 103 of the National Defense Education Act of 1958, relating to [the] **definition of State**, is amended by **striking out 'Hawaii,' each time it appears therein.** (Emphasis added.)

In other words, when Alaska and Hawaii become the 49th and 50th states of the union, they **immediately had to be dropped from the various definitions of 'State,' throughout the 48 titles and the statutes!** This means that *ipso jure*, by the law itself, the **Internal Revenue Code does not apply to Alaska and Hawaii!!!—and, therefore, *pari ratione*, by like reasoning, not the other 48 union states, as well**. For, to quote one more legal maxim, *res accedent lumina rebus*, one thing sheds light on others.

So, then, the above "States other than Alaska and Hawaii" are the ***federal territorial States***—Puerto Rico, Guam, Virgin Islands, the Northern Marianas, District of Columbia, etc.—they vary from section to section in the various codes and statutes, as the particular application requires, but they are all, in a loose sense of the word, territories (not incorporated Territories, as were Alaska and Hawaii) in the federal zone.

Due to the apodictic, incontrovertible nature of the above observation, the following *placita juris*, rules of law, come to mind:

> ***Secundum normam legis, cadit quæstio*!**
> According to the rule of law, there is no room for further argument!

> In determining the scope of a statute, one is to look first at its language. **If the language is unambiguous,…it is to be regarded as conclusive** unless there is a clearly expressed legislative intent to the contrary. *Dickinson v. New Banner Institute, Inc*., 460 U.S. 103, hearing denied, 461 U.S. 911. (Emphasis added.)

Conclusive though the above is, there nevertheless remains much of interest and great importance to say on the subject.

For example, in the Interstate Agreement on Detainers Act (Pub.L. 91-538, Dec. 9, 1970, 94 Stat. 1397 et seq.) it throws out a shocker in Article II(a):

> 'State' shall mean a State of the [District] United States; the **United States of America**; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico. (Emphasis added.)

Congress, in defining the United States of America as a State, reaffirms what we saw above…it is a geographical entity, as well as a government or political compact distinct from and, therefore, foreign to the constitutionally created United States. And it is listed together with, and therefore distinct from, the federal States, territories or possessions. Verily, this is wondrous strange! It's almost spooky, as it is so far removed from any rational explanation.

I particularly like the definition in the first version of **"The Code of the Laws of the United States of America,"** of June 30, 1926. (Emphasis added.) In Section 2 it states:

> In all courts, tribunals, and public offices of the United States, at home or abroad [in the union states], of the District of Columbia, and of **each State, Territory, or insular possession of the United States…**

How clear can it get? It says "each State…***of*** [belonging to] the United States."

> …the most natural meaning of "of the United States" is "belonging to the United States." *Ellis v. United States*, 206 U.S. 246 (1907).

Does Iowa belong to the territorial District United States?

Also, I recently heard of a new unearthing by the dauntless South Carolina attorney, Larry Becraft, to the effect that:

> The first FULL and complete definition of the word "**state**" in a federal statute appears in an act to tax booze and tobacco, 15 Stat. 125, ch.186 (July 20, 1868). Section 104 of this act, 15 Stat. at 166, contained definitions for certain words appearing in the act and here you will find the following:
>
> ...and the word '**State' to *mean* and include a Territory and District of Columbia**... (Emphasis added.)

At that early date, the government did not dissimulate so well. Here, it is simply tells it 'like it is.' How could one possibly fit a union state into that definition?!

I also found, in reading 12 USC, chapter 2, § 202 **Definitions,** that it says:

> [T]he term 'State' **means** any State, Territory, or possession ***of*** ['belonging to'…surely, not Florida] the United States, and the Canal Zone." (Emphasis added.)

Note that the Canal Zone is not a federal State, Territory, or possession of the U.S., but is still being classified as a State! But, then, you must **always** look at the title, chapter, section, subsection, or, sometimes even sentence, to determine the specific intent. Again, **there is no ONE statutory 'United States.'**

This is incontestable from the dozens and dozens of definitions of the 'United States' in the statutes and codes. And yet one is usually thought weird to contest the underlying theme of the whole IRC—namely, that there is only one United States…the whole nation. This is fatuous, of course, when you really think about it—which almost no one does. Not just because of the Hooven case, above, but because of the numbing number of variations on the definition of the 'United States' in the IRC. Some say over 200, which is perhaps too many, but **certainly more than one.**

In this title (12), 'Banks and Banking,' they always seem to use the universally recognized restrictive word '**means**,' rather than the IRC's term of choice, 'includes,' that has beguiled, deceived, deluded, hoodwinked, misdirected, and, most of all victimized, basically, the whole country. Such as in § 215b (2) **Definitions:**

> 'State' means *the several States* and Territories, [comma!] the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia. (Emphasis added.)

Here, of course, the confusion is limited to the correct interpretation of the phrase 'the several States,' which I have dealt with above.

Title 28, **Crimes and Criminal Procedure**, also contributes to the correct understanding of 'State' and 'United States.' Section 5, **United States defined** says:

> The term 'United States,' as used in this title in a territorial sense, includes all places and waters, continental and insular, **subject to the [complete] jurisdiction of the United States**, except the Canal Zone. (Emphasis added.)

This, of course, excludes the union states. As does Section 7, **Special maritime and territorial jurisdiction of the United States defined**, where none of the eight jurisdictions mentioned venture beyond the federal zone, into the 50 states. Obviously! If they did, then the designated area would be, eo ipso, in the federal zone and not in the states…a non sequitur.

One last example from Title12: In Section 95a(3) I found:

> As used in this subdivision the term 'United States' means the United States [oh, really!!] and any place subject to the jurisdiction thereof; [p]rovided, however, [t]hat the foregoing shall not be construed as a limitation upon the power of the President**, which is hereby conferred,** to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any and all of the terms used in this subdivision." **(**Emphasis added.)

Unquestionably unconstitutional! Even if reference is being made only to domestic—i.e., federal zone—matters, over which the U.S. has jurisdiction…which, of course, must be the case, despite all attempts to imply otherwise. The legislature cannot delegate legislative power to the executive.

This has not been contested yet, as was the President's authority in *Panama Refining Co. v. Ryan,* 293 U.S. 388 (1935). It was found there that "authorizing the President to prescribe such rules and regulations as may be necessary to carry out the purposes" of the Act (407) constituted unconstitutional delegation of legislative power to him, and that the regulations for this were "without constitutional authority" (433). Similar cases could be cited.

But then, since the commissions for newly appointed Federal judges are no longer filed with the Secretary of State, but with the Attorney General, under the seal of that executive office, **the judiciary is also under the control of the President**. Which fact is further confirmed by:

> **SUPREME COURT OF THE U.S. - RULES**
>
> **Part VIII. Disposition of Cases**
>
> **Rule 45. Process; Mandates**
>
> 1. **All process of this Court issues in the name of the President of the United States**. (Emphasis added in this sentence.)

So much for separation of powers!!

Please excuse that brief interruption. I will now add the coup de grace, in our investigation of the

meaning of the term 'state,' in the IRC…and all other codes. It is found in 26 USC 7621 **Internal revenue districts:**

> (b) Boundaries.…[T]he President may subdivide **any State** or the District of Columbia, or **unite into one district two or more States**." (Emphasis added.)

This **cannot conceivably** refer to union states, for it would contravene the Constitution (4:3:1):

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; **nor any State be formed by the Junction of two or more States**, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress. (Emphasis added.)

Another observation throws more light on this matter. The above wording was promulgated 2/1/77. It should have been changed in the Hawaii Omnibus Act, right after Hawaii was admitted to the union, in 1959—as was this section, in the Alaska Omnibus Act, after Alaska was made a state of the union, earlier in the year. I guess that they just held off as long as possible. For, before that, in the IRC revision of 1/3/59, the subsection read:

> Boundaries.…[T]he President may subdivide any State, Territory, or the District of Columbia, or may unite into one District two or more States or ***a*** Territory and one or more States. (Emphasis added.)

At that time, the United States had one remaining incorporated ***T***erritory. Ever afterwards, just unincorporated ***t***erritories, such as Guam or the Virgin Islands.

Because of its importance, I will also mention that § 7621 is not listed in the Parallel Table of Authorities, in the Index volume of the CFR for Title 26. **This indicates that it does not—can not—have general applicability to the union states and the population at large**. Of course not, how could it?!

Without going into detail, I will simply say that the President delegated authority to the Secretary of Treasury to prescribe internal revenue districts (Executive Order No.10289, 9/17/51). The Secretary then re-delegated it to the Commissioner of Internal Revenue. This delegated authority is related to the Anti-Smuggling Act and customs duties, so it is not surprising that the accompanying regulations are found in the CFR for Title 19 **Customs Duties**. United States Customs Service offices are legitimately located in the union states, but the only authorized internal revenue districts were located in Puerto Rico, the Canal Zone, and other insular possessions. **The Commissioner of Internal Revenue has delegated authority strictly limited by TDO 150-01 and 150-42, which have nothing to do with any area within the 50 states!**

So, it would seem that, legally, there cannot be internal revenue districts in the 50 states, and, yet, we know that there are said to be such so-called districts.

There is a phrase in TDO 150-01, which is interesting…though it doesn't solve the problem:

6. *U.S. Territories and Insular Possessions.* .

> The Commissioner shall, to the extent of authority otherwise invested in him, provide for the administration of United States internal revenue laws in the United States territories and insular possessions **and other authorized areas of the world.** (Emphasis added.)

The union states qualify, of course, as "other authorized areas of the world." But that still doesn't get around the unconstitutionality of applying § 7621 to union states.

But they do it, anyway, in the Federal Register, Vol. 51, No. 53, Wednesday, March 19, 1986, pp. 9571-3, [**captioned, interestingly, Number: 150-01!**], entitled **Designation of Internal Revenue Districts** begins:

> Under the authority given to the President to establish and alter Internal Revenue Districts by section 7621 of the Internal Revenue Code of 1954, as amended, and vested in me as Secretary of Treasury by Executive Order 10574…the following Internal Revenue Districts continue as they existed prior to this order, with the changes noted below…[and there follow dozens of areas so designated.] (Emphasis added.)

All of which are flagrantly unconstitutional. Indeed, this is one of the most blatant and brazen misapplications of the code that I recall. And it is flaunted in our faces, daring us to do something about it.

Going hand in glove with 26 USC 7621 is § 7601 **Canvass of districts for taxable persons and objects:**

> **(a) General rule.** The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed. (Emphasis added.)

Unlike § 7621, this section has implementing regulations…as eight parts, however, **of Title 27 (BATF).** So, there is legitimate canvassing of internal revenue districts. It is just that it is **only** for such as Subtitle E of the IRC, dealing with tobacco, alcohol, and firearms. And **only** in the insular possessions of the U.S.

Allow me to remind you that the Internal Revenue Code is used by both the IRS and the BATF. The IRS has no proprietary hold on it. For example, it has absolutely nothing to do with, and never makes reference to, Subtitle E **Alcohol, Tobacco, and other Excise Taxes.** And Subtitle F **Procedure and Administration**, contains ***all*** enforcement sections in the IRC, and these, without exception, are implemented **exclusively** by the BATF, and have to do only with excise taxes. There are a few sections

therein that the IRS avails itself of, but they do not involve any aspect of enforcement.

Part 70 of CFR 27 is also where are found the regulations enabling the imposition of income tax on officers and employees of the U.S., because it is an excise taxable privilege to work for the Government. **But there are no regulations authorizing canvassing any internal revenue districts for Subtitle A Individual income tax, or Subtitle C employment tax…no matter where these districts are located.**

It's of more than passing interest to note that lacking any statutory or regulatory authority in the 50 states, the IRS, BATF, and other alphabet soup agencies, can be required by law to apply for permission to enter these states, as **registered foreign agents**, pursuant to the **Foreign Agents Registration Act of 1938**. For they are operating under international law, not under the general, plenary powers of 4:3:2 of the U.S. Constitution, as is the case in the federal zone, but rather under the specifically authorized enumerated special powers of 1:8, therein.

Perhaps it would be easier to understand that IRS personnel are "agents of a foreign principal," if one recalls that our Secretary of the Treasury is also the Governor of the International Monetary Fund and the Bank of Reconstruction and Development, to which he was appointed, per the Bretton Woods Agreements Act, of 1944 (22 USC 286). And, pursuant to Section 3 of this Act, as amended, the U.S. Governor/Councilor is prohibited "from receiving salary or other compensation from the U.S. Government."

Also, one should take note of Title 18 § 219. **Officers and employees acting as agents of foreign principals** and § 591 **Agents of foreign governments**.

Which should be read in conjunction with 22 USC 611(c):

> Except as provided in subsection (d) of this section, the term 'agent of a foreign principal' means--
> (1) any person who acts as an agent, representative employee, or servant, or any person who acts in any other capacity **at the order, request, or under the direction or control, of a foreign principal** or a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part, by a foreign principal, and who directly or through any other person—
>
> > (i) engages within the United States in political activities for or in
> >
> > the interests of such foreign principal;…
> >
> > (iii) within the United States solicits, **collects, disperses, or dispenses contributions, loans money, or other things of value for or in the interests of such foreign principal**…
> > (Emphasis added.)

This should suffice to establish, as stated above, that Internal Revenue personnel are agents operating under the authority, control, and jurisdiction of a 'foreign principal,' as laid out in the **Articles of Agreement of the International Monetary Fund**, Article IX, Section 3. And, 22 USC 286h of the **Bretton Woods Agreements Act** indicates that:

> The provisions of article IX, sections 2 to 9, both inclusive…of the Articles of Agreement of the Bank, **shall have full force and effect in the [federal District] United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Fund and the Bank, respectively.** (Emphasis added.)

That Internal Revenue employees are 'foreign agents is also established by the **International Organizations Immunities Act,** of 1945, and found at 22 USC 288 and 288f.

In other words, the U.S. has relinquished its sovereignty to these organizations of the UN, and must operate under the above charter—i.e., the Articles of Agreement of the Bank and the Fund. Refer to 22 USC 286e…indeed all of § 286.

(Speaking of relinquishing sovereignty, I must interject, here, that the Congressional Research Service wrote: "As a member of the WTO [World Trade Organization], the United States does commit to act in accordance with the rules of the multilateral body. It [the U.S.] is legally obligated to ensure national laws do not conflict with WTO rules." (8/25/99) To put teeth to this, the Wall Street Journal wrote: "A recent decision by the 'WTO Appellate Body' ruled that $2.2 billion in United States tax breaks violate WTO rules and must be eliminated by October 1, 2000." What constitutes 'United States' changes almost daily, it seems.)

That this has substance is demonstrated by the fact that sheriffs can, and have, limited the entry of IRS agents into their county. Agents have even been thrown in jail, and let out only on condition that they don't return! In some counties there are virtually no liens and levies filed, or prosecutions for failure to file tax returns. For, all these three actions are *ultra vires*…performed without delegated authority granted *sub curia*, under law.

The following is from a communication I received recently, concerning what the famous Bighorn Sheriff did, a couple of years ago:

> Sheriff Dave Mattis stated that all federal officials are forbidden to enter his county without his prior approval. If a sheriff doesn't want the Feds in his county he has the constitutional power and right to keep them out or ask them to leave **or retain them in custody**. The court decision came about after Mattis and other members of the Wyoming Sheriffs' Association brought a suit against both the BATF and the IRS in the Wyoming federal court district seeking restoration of the protections enshrined in the United States Constitution and the Wyoming Constitution. The District Court ruled in favor of the sheriffs, stating that 'Wyoming is a sovereign state and the duly elected sheriff of a county is the highest law enforcement official within a county and has law enforcement powers exceeding that of any other state or federal official.' The sheriffs are also

> demanding that federal agencies immediately cease the seizure of private property and the impoundment of private bank accounts without regard to due process in **state courts**. (Emphasis added.)

Another wrinkle in this garment can be seen by the fact that I specifically recall hearing, some years ago, that some congressperson or senator (I forget who) registered as a foreign agent in the State that elected him. For, the annotated Title 18 lists a half a dozen cases ruling that a member of Congress is an officer of the 'United States'—and I think that you are becoming informed enough to realize which 'United States'….and that it is a foreign government under private international law. (See section 21, below, which is so titled.)

This brings to mind some clear, indisputable, but oft-forgot words of the Supreme Court:

> The Government of the United States is one of enumerated powers;…**it has no inherent powers of sovereignty**. *Kansas v. Colorado*, 206 US 46 (1906) (Emphasis added.)

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8. The Hawaii Omnibus Act.

Because of its importance, I want to focus a bit more on the Hawaii Omnibus Act (Vol. 74, Public Law 86-624). It is described as "An Act To amend certain laws of the United States in light of the admission of the State of Hawaii into the Union…" It constitutes 13 pages of intriguing amendments to various federal statutes and codes, that the government was forced to promulgate—which is really a stand-alone exposé of the contortions that the federal government goes through to mask its identity, and, thereby, to mislead Americans into believing that they are subject to laws which they are not. But, if we weren't so hopelessly indoctrinated, this Act, by itself, would shatter the delusion that all Americans are U.S. citizens and, therefore, subject to all the federal codes and laws.

I recommend reading the whole Act, for I can only call attention to a few points, among this 'embarrassment of riches,' as the French say.

I will begin with a quote concerning the IRC, at § 18(a):

> Section 4262(c)(1) of the Internal Revenue Code of 1954 (relating to the definition of 'continental United States' for purposes of the tax on transportation of persons) is amended to read as follows: '(1) Continental United States.—The term "continental United States" means the District of Columbia and the States other than Alaska and Hawaii.' (Underline added. Parenthesis in original.)

The use of "other than" implies that Alaska and Hawaii were previously 'States" similar to whatever political bodies were referred to by the preceding word, "States." To further verify this is the case, it is necessary to go back to the also important Alaska Omnibus Act, of the 86th Congress, Volume 73, 1959, which accommodated the statutes and codes to Alaska's having been made a 'state.' We read at § 48:

> Whenever the phrase **'continental United States'** is used in any law of the United States enacted after the date of enactment of this Act, it shall mean the 49 States on the North American Continent [which would include, now, Alaska] and the District of Columbia [as in section 25(b) of the Hawaii Omnibus Act], **unless otherwise expressly provided**. (Emphasis added.)

There is the catch…'unless otherwise expressly provided!' One need only look at Section 22 to see where it is so provided…for it is obviously not so in § 18(a), above:

> (a)…and sections 3121(e)(1) [remember this section from the Kennelly letter?], 3306(j), 4221(d)(4), and 4233(b) of such code (each relating to a special **definition of 'State'**) are amended by **striking out 'Alaska.'** (Parentheses in original. Emphasis added.)
>
> (b) Section 4262(c)(1) of the Internal Revenue Code of 1954 (definition of 'continental United States') is amended to read as follows: '(1) The continental United States.—The term 'continental United States' means the District of Columbia and the States other than Alaska.' (Emphasis added.)

Here, in this section, Hawaii, despite being comprised of islands in the middle of the Pacific, is considered, by implication, to be part of the 'continental' U.S. For otherwise it would not have been thought necessary to exclude it from the same section, 4262(c)(1), a few months later, after Hawaii was taken into the union. In 'words of law' islands can be termed continental; there is no necessary relationship to the world as normally defined. Thus, with Hawaii and Alaska, we view how a **S**tate ceases to be a **S**tate when it becomes a **s**tate!

So, in answer to our question, above, the "States other than," in this section of the Hawaii Omnibus Act, **can refer only to the federal States**…of Guam, the Northern Marianas, etc.

One should also note Section 27 of the Hawaii Omnibus Act:

> (b) striking out the words 'continental United States, **its** Territories, and possessions' in section 211(j) and inserting in lieu thereof the words '**States of the Union**, the District of Columbia, Puerto Rico, and the possessions of the United States.' (Emphasis added.)

Here, the use of 'its' indicates that the federal territorial U.S. is being referred to, for the 50 union states obviously don't possess any Territories; its agency, the U.S., does. In fact, there are no more incorporated Territories, now that Hawaii has become a union state—hence, the need to expunge the word from any definition of the United States.

This interpretation is substantiated by the numerous times that 'continental' is struck out of the phrase 'continental United States,' in this Act—**indicating that all along, in these instances, 'continental United States' was no different than the federal corporate territorial District 'United States'**…it just had a slightly different makeup… incorporating the Territory (*federal State*) of Hawaii.

There is another facet of these amendments which cries out for mention, such as seen in the following:

> …striking out 'continental United States' in clause (ii) of such sentence and inserting in lieu thereof 'United States (which for the purposes of **this sentence and the next sentence means the fifty States and the District of Columbia**)'. (Section 14(d)(2)) (Emphasis added.)
>
> …The term 'United States' means (**but only for purposes of this subsection and subsection (a)**) the fifty States and the District of Columbia. (Section 29(d)(3)) (Emphasis added.)

In other words, **only on rare occasions in the codes and statutes is it found necessary to refer to the 50 States**. Only in a sentence here, or in a subsection there…each such occasion being scrupulously noted, and **disclaimed as being the norm**, just as above. Which fact alone, one would think, would suggest to even a school child that ***elsewhere* this was not the case**. It is almost like they are waving a red flag and exclaiming: 'Please be advised that only in this specific and particular instance are we compelled and allowed to make reference to the 50 union states united by and under the Constitution.'

Yet, look what here replaced 'the continental United States' in § 27(b), above: "**States of the Union**, the District of Columbia, Puerto Rico, and the possessions of the United States." Just as it was in the preceding subsection, § 27(a)…as well as in § 8(a), § 36, and § 38.

This presents a problem, for everyone believes that this phrase stands for the 50 union states. And, yet here, in this section, at least, it is being equated, with the territorial 'United States.' I will let the reader ponder the solution of this conundrum, for I have no answer. I would recall to your mind a similar appropriation of the term "United States of America" that I discuss in section 2.

In any event, 'States of the Union' unmistakably refers to the 50 union states in Section 45 of the Hawaii Omnibus Act:

purchases of typewriters

> Title I of the Independent Offices Appropriation Act, 1960, is, [sic] amended by striking out the words 'for the purchase within the continental limits of the United States of any typewriting machines' and inserting in lieu thereof 'for the purchase within the States of the Union and the District of Columbia of any typewriting machines'.

This is because, previously typewriters had been bought from Alaska and Hawaii…which, **as Territories, were, therefore, "within the continental limits of the United States."** Now, as two of the fifty 'States of the Union,' they were not within the continental limits of the federal United States.

So, a show of hands. Who still believes that the 'States' referred to in the codes—unless pointedly qualified—embraces the 50 union states?

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9. A few general remarks.

Along with the instances I have noted, there is another place in which the deviousness and sneakiness of the IRS really shows. In three sections of the IRC they need to encompass all union states. In 4132(7) they say that 'U.S.' has the meaning that it does in 4612(a)(4), where the 50 States are mentioned. Then, in 4672(b)(2), they remove it yet another stage, saying that it has the meaning that it does in 4662(a)(2), wherein it says that it has the meaning that it does in 4612(a)(4)! They just do not like to use the words "50 States!" All of which calls more attention to the fact that the code only rarely has occasion to refer the 50 union states.

And, they actually **cannot do so**, except where required, as above. For, as some like to put it, they are to a great extent, though not exclusively, writing the **employment conditions for those who work for the federal government**, as well as for those two categories mentioned at the beginning of the IRC and its regulations. E.g., 26 CFR 1.1-1:

> **Income tax on individuals (a) General rule.** (1) Section 1 of the Code imposes an income tax on the income of every individual who is a **citizen or resident of the [federal District] United States**. (Emphasis added.)

The first sentence in the IRC reads somewhat differently. Part 1 is titled simply:

> **Tax on individuals**. **Section 1 Tax imposed. (a) Married individuals filing joint returns and surviving spouses.** There is hereby imposed on the **taxable income** of— (Emphasis added.)

Be aware that **all headings** in the code are without any legal force or effect, as pointed out by the IRC, itself, in 26 USC 7806(b). The heading or title, here, is guilefully misdirecting, for **there never has been and never could be an "income tax" *on individuals***…except an apportioned tax or a capitation tax. It would be unconstitutional—and the federal District government generally makes a great effort to write (albeit deviously) its laws in conformity with the Constitution. This wording is, doubtlessly, to give the impression that it is a **direct tax.** Indeed, the very first sentence of 26 CFR, after the heading, states what most 'taxpayers' (**incorrectly**) believe that the tax is on. It's "an income tax **on the income**…"—or, as 26 USC words it, "**on the taxable income**…" So, in both cases, in less than a dozen words, there is a switch from a tax on "individuals" to one on "income" or "taxable income."

This leads to the embarrassing question as to **what exactly is "income."** This is a moot point, of course…unless one is a 'taxpayer.' But, I will pursue the matter in order to provide a full understanding as to why the IRS feels compelled to indicate in everyone's 'Individual Master File' that ***all*** 'individual income taxpayers' **are corporations, and pay corporate income tax.**

Congress does not try to define internal revenue '**income**' in the code, or elsewhere—**and the Supreme Court says that they (Congress) can not do so!** Section 61 of the IRC, weasels out by simply defining "**gross income**." But that's like defining a green apple as an apple that is the color green…without

defining apple.

It might be of passing interest that Section 61, one of the most crucial sections of Subtitle A, has not had any legitimate application for a number of years. Briefly, a footnote to Section 61 of the 1954 revision of the IRC reads: "Source; Sec.22(a), 1939 Code, substantially unchanged." The Parallel Table of Authorities in the Index of the CFR indicates that 26 USC 22, of the 1939 IRC, corresponds to 26 CFR Part 519. A following table shows that Part 519 is the Canadian Tax Treaty, a 75 year treaty signed in 1918, which expired in 1993, and is **now not operative, but shown as 'reserved' for future use.** So, **Section 61 does not, and never did, define taxable income from American sources**, but rather from Canadian sources. One of the many gems hidden right out in plain view. The deception is not that the documentation isn't available; it's that the IRS proceeds on its course knowingly ignoring it.

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10. Corporate entities.

I will seek to demonstrate, now, why "income tax" must come from **corporate entities**.

I believe that I can best begin by quoting from what is easily one of the half dozen most important U.S. Supreme Court tax cases: *Eisner v. Macomber*, 252 U.S. 189 (1920):

> [I]t becomes essential to distinguish what is and what is not "income"…and….Congress **cannot** by any definition it may adopt conclude the matter.
>
> After examining dictionaries in common use…we find little to add to the succinct definition adopted in two cases arising under the Corporation Act of l909 (*Stratton's Independence v. Howbert*, 231 U.S.399, 415; *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 185)—"**Income** may be defined as the gain derived from capital, from labor, or from both combined," **provided** it be understood to include profit gained through **a sale or conversion of capital assets, to which it was applied in the *Doyle* Case** (pp. 183, 185)
>
> "*Derived—from—capital*"…Here we have the essential matter: *not* a gain *accruing* to capital, **not a *growth* or *increment* of value *in* the investment** but a gain, a profit, something of exchangeable value ***proceeding from* the property**, ***severed from*** the capital however invested or employed, and *coming in*, being "*derived*," that is, *received*, or *drawn by* the recipient (the taxpayer) **for his *separate* use**, benefit, and disposal—*that* is income derived from property. Nothing else answers the description.
>
> The same fundamental conception is clearly set forth in the Sixteenth Amendment —"incomes, *from* whatever *source derived*…" Eisner at pp. 206-208. (Italics are in the original text; bold added.)

This powerful, pithy, and very lucid treatment should have prevented the IRS from **equating "gross incomes" with "gross receipts."** As it was put in *Conner v. United States*, 303 F Supp. 1187, 1991,

(1969):

> Income is nothing more nor less than realized gain….**It is not synonymous with receipts**….If there is no gain there is no income…Congress has taxed **income, not compensation**. (Emphasis added. Other cases state the same.)

In Eisner, above, "profit" and "gain" were meant to limit the meaning of "income" to "profit gained through a sale or conversion of capital assets, *to which it was applied in the Doyle Case*." To what was it applied? The Supreme Court stated, in Doyle (at 179):

> Whatever difficulty there may be about a precise and scientific definition of 'income,' it imports, as used here…the idea of **gain or increase arising from *corporate activities***." (Emphasis added.)

And permit me to repeat the quote from the *Maryland Casualty Co. v. U.S., 251 U.S. 342 (1920)* case:

> By the act of August 5, 1909, a special excise tax was imposed upon the privilege of carrying on business by corporations. **It was in reality a license to carry on business**…. The Income Tax Act of October 3, 1913, should be considered as a **statutory construction of the act of August 5, 1909, in so far as it related to the basis of taxation.** (December Term, 1916-17 [52 C. Cls.] Emphasis added.)

The above can have any pertinence, of course, **only if one is subject to and liable for** the 'normal tax,' called 'income tax.' **What conceivable relevance could the precise definition of 'income' or 'gross income' have for someone not so subject and liable?!** Arguing that one has none of this ill-defined stuff called 'income' implies that if you did you believe that you would then be potentially liable for federal income tax.

This rests on the fallacy that earned property is the subject of 'income tax.' But both the House Congressional Record and the Supreme Court have decimated this belief:

> The income tax is, therefore, not a tax on income as such. **It is an excise tax with respect to certain activities and privileges** which is **measured by reference to the income** which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax. (House Congressional Record, 3-27-43, page 2580. Emphasis added.)

> Excises are "taxes laid upon the manufacture, sale or consumption of commodities within a country, upon licenses to pursue certain occupations, and upon corporate privileges." Cooley, Const. Lim., 7th ed., 680. (*Flint v. Stone Tracy Co.*, 220 U.S. 107, at 151 (1911).)

And, they go on to say, "the element of demand is lacking. If business is not done in the manner described in the statute, no tax is payable." (loc cit, at 151-152.) (Emphasis added.)

Note, too, a later ruling of the Supreme Court:

> The 16th Amendment contains nothing repudiating or challenging the ruling of the Pollock case…The contention that the Amendment treats a tax on income as a direct tax is …wholly without foundation…The 16th Amendment, **as correctly interpreted**, was **limited to indirect [excise] taxes**, and for that reason is Constitutional. (*Brushaber v. Union Pacific RR Co*, 240 US 1. Emphasis added.)

So, the so-called 'income tax' is really a privilege or excise tax measured by the income produced by the exercise of such government privilege. This property (income) is not what is taxed; **it's only a means of measuring how much to charge** for the **taxable activity**, of which the taxpayer voluntarily avails him/herself. Not indulging in any such privileged activity, one would, eo ipso, have no 'taxable year' (26 USC 6012), and, therefore, all discussion of 'gross income' (26 USC 61) would be moot and pointless—making the filing of a tax return uncalled for...indeed, perjurous..

In any event, this is the standard so-called patriot approach. And it seems reasonable, at first blush—to me, at least…if I didn't know about Title 15 **Commerce and Trade**, § 17 **Antitrust laws not applicable to labor organizations**. I well remember when I verified this at the law library, a few years ago; I had to see it in print. The first sentence reads: "**THE LABOR OF A HUMAN BEING IS NOT A COMMODITY OR ARTICLE OF COMMERCE.**" (Emphasis added.) On first encountering this, I thought that it must surely be one of the biggest oversights the code lawyers ever permitted to make its way into the codes. Why? Because it means that **human labor cannot be subject to an indirect tax**, an excise tax, in the above areas…when not working for the government. When you get commerce out of the picture, you have got government out of the picture! If ever there was a marriage made in heaven, it is commerce and government. All of which is a good segue into the following section, which seeks to show that even if a tax, direct or indirect, could be imposed on someone, it would not be possible to calculate…

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11. The value of one's labor.

The following establishes the impossibility of being able to calculate any Subtitle A tax obligation for **any** human taxpayer. Strong words, but the government can't find anyone to refute them.

I will start by quoting the case of *Oliver v. Halstead*, 86 S.E.2d 858 (1955); 196 Va. 992, 994 (1955), which is a beautiful summary of the points that I want to present:

> The word "**profit**" is defined in *Black's Law Dictionary* (3rd edition) as "The advance in the price of goods sold beyond the cost of purchase. The gain made by the sale of produce or manufactures, ***after deducting*** **the value of *LABOR*, the materials, rents, and all expenses, together with the interest of the capital employed**." There is a clear distinction between "profit" and "wages" or compensation for labor. (Emphasis added.)

> "**Compensation for labor cannot be regarded as profit within the meaning of the law**. The Word 'profit,' as ordinarily used, means the gain made upon any business or investment—a different thing altogether from mere compensation for labor." *Commercial League Association of America v. People ex rel. Needles*, Auditor, 90 Ill. 166. "Reasonable compensation for labor or services rendered is not profit." *Lauderdale Cemetery Association v. Matthews*, 354 Pa. 239, 47 A. (2d) 277. (Emphasis added.)

The point is, that even if someone were subject to Subtitle A income tax, **it would be totally impossible to calculate the expenses the taxpayer could deduct, in order to arrive at his "gain" or "profit."** The correct way of viewing this, however, is set forth in 26 USC 83, its regulations, and in Publication 17 **Tax Guide for Individuals: Basis.** The Fair Market Value or **contract value of labor can not be taxed**, for **there is no excess**—**otherwise, the contract would not represent fair value, for both the parties**. (See 26 CFR 1.83-3(g).) Right in the Code, then, it says that our labor does not have a zero basis—we are not, it admits, giving our labor away for nothing! In brief, **labor is property, all property is cost, and cost is deductible. Ergo, *nil debit*, nothing is owed!**

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12. Taxpayer's IMF indicates that s/he is a business.

If the hundred million 'individual income tax' taxpayers seem to refute the fact that all are paying a corporate tax, look at any of the correspondence they receive—like the first letter sent to late filers, the CP 515. To find out what such numbers mean, one must go to the inch thick 6209 Manual, every page of which is marked "for official use only," and a few years ago was confiscated from defendants, in court…though it can now be found on a U.S. Government website. It decodes **The Individual Master File** (IMF), which the IRS has for every taxpayer—i.e., basically, everyone who has ever filed a tax return or signed a Form W-4. All correspondence is recorded, together with everything else they have entered about you. You will find there, in Section 9, that Computer Paragraphs, like the CP 515, with three digits, **refer only to businesses!** (Please refer to the *Maryland Casualty Co.* case, above.) Yet, three digits are what **every individual filer** receives. So, there are over 100 million 'businesses' filing returns, without realizing it. They certainly would, if they bothered to decode their IMF!

For lo and behold! They would probably read there that they have been designated as narcotics traffickers. They would find that their IMF has a TC (transaction code), say, of 914 and, say, a 307.301 blocking series, which indicates a criminal violation of the US/UK Tax Treaty. This indicates a (refutable, fortunately) presumption that you have secured a loan in the Cayman Islands, to purchase narcotics for sale in the Virgin Islands, without paying the backup withholding, on Form 8288.

Utterly outrageous as it sounds, this is the usual default notation in the IMF. Though I know several people with others. Like an acquaintance, Richard S., who is classified as having a machine shop in Puerto Rico, and his wife is said to be manufacturing machine guns in the Virgin Islands.

All filers are transmogrified, by some strange magic, **into businesses exercising government privileges**, and, thereby, effectively connected to the federal zone.

QED, they are taxpayers—which, of course, they have sworn under penalties of perjury that they were, anyway, by signing the Form 1040. However, the government feels that it needs more than that. In any event, present the IRS with a decoded copy of your IMF, for the year(s) in question, in a pre-trial conference, and check your stopwatch to see how fast you are out of there!

One's IMF is easily obtainable, by a Freedom of Information Act (FOIA) request. Two experts, who have decoded over 2000 IMFs, **have yet to find one that did not indicate some drug-related activity, the manufacture of machine guns, etc.**

But, interestingly, you cannot obtain records concerning yourself under the Privacy Act, for that Act only deals with records of "natural persons" and not **entity** documents on businesses, etc. They will send your IMF to you, and say that it is in response to your FOIA request. If you really persist, they will give you excuses. For, the 124 files that the IRS has access to are **all** '***entity*** modules,' and an entity is not a living person, but a fictitious creation, like a corporation.

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13. 'Nonresident alien.'

I believe that the term 'nonresident alien' warrants more detailed study.

To begin with, one must note the unfortunate fact that the IRC would like to give the impression that two different meanings of the term 'nonresident alien' are the same…simply by choosing this off-putting phrase. After all, it simply means, as stated at 26 USC 7701(b)(1)(B) **Nonresident alien:**

> An individual is a nonresident alien if such individual is neither a citizen of the [District] United States nor a resident of the [District] United States…

That is, he is Citizen of California, say, who does not reside in the federal zone. **OR**, Canadians and Mexicans, for the most part, who work in the union states, but reside in their home country. But, it sounds like someone from Mars. A newly arrived Frenchman, taking up residence in, say, Alabama is a green card **resident alien** or an '**immigrant**.' If he were just travelling here, and not working, he would be just a tourist. For these terms have meaning only within the state of the forum (*forum contractus*, a place of jurisdiction—in the present case, the tax forum) of the IRC. And, if you don't work or receive 1099 payments, you don't exist as far as the IRS is concerned.

According to the IRS Publication 519 **U.S. Guide for Aliens,** anyone who is not a federal U.S. citizen is some kind of alien, which would be practically the whole of America, outside the federal zone, if well over 200 million of them hadn't volunteered, in numerous ways.

I would like to interject a few words on Subtitle A being called by some a voluntary tax. This, of course, is an oxymoron; tax is an exaction imposed by the government. One can voluntarily choose to gift the government, but in doing so one is not paying a tax. Subtitle A has definite requirements that must be adhered to by the certain specified individuals…such as that nonresident aliens must pay for

the privilege of earning money in the District U.S., if they are Americans, or anywhere in America, if they are, say, Mexicans residing in their country, but working in this country. Or federal, State, or municipal employees living anywhere.

In the original California Code of 1872, it states that one is **either a Citizen of this State, a Citizen of another State, or an alien**—from anywhere else in the world…Japan or England, say, **or the District United States**. That is, if one is not a state Citizen, then s/he is a **resident alien**, subject to the total control of the corporate State wherein s/he lives. A state Citizen, on the other hand, is obviously "**nonresident" to anywhere else**, including the territorial "United States."

> A person is born subject to the jurisdiction of the [federal] United States, for purposes of acquiring citizenship at birth, if this birth occurs in a territory over which the [federal] United States is [completely] sovereign… (3A Am Jur 1420, art. Aliens and Citizens)
>
> [T]he phrase 'subject to the jurisdiction' relates to time of birth, and one not owing allegiance at birth cannot become a Citizen **save by subsequent naturalization**, individually or collectively. The words do not mean merely geographical location, but ***'completely subject*** to the political jurisdiction**.'**"
> *Elk v. Wilkins*, 112 U.S. 94, 102 (1884). (Emphasis added.)
>
> Individual naturalization **must** follow certain steps: (a) petition for naturalization by a person of lawful age who has been a lawful resident of the United States [i.e., one of the union states or the federal zone] for 5 years;…(c) hearing before a U.S. District Court or certain State courts of record…" *Black's Law Dictionary* (6th edition, art. 'naturalization')

Absent proof of such actions, one cannot be legally labeled a 'U.S. citizen,' subject to the territorial corporate United States Government. Very few people realize this, even in the so-called Patriot community. It is a golden nugget. Indeed, one is perjuring oneself by claiming to be a U.S. citizen, if s/he was born in a union state, not naturalized, and not currently under the complete jurisdiction of the federal government, as by living in D.C. or on an army base. Although, as one IR agent said, one would never be prosecuted for this!

Although one could be! Title 18 Chapter 43 **False personation** Section 911 **Citizen of the United States,** says, in toto:

> Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both.

And, it is interesting to note 26 CFR 1.871-4:

> **Nonresidence presumed.** An alien by reason of his alienage, is presumed to be a nonresident alien.

Therefore, unless it could be proved that one was **naturalized** (as required in the 14th Amendment), his/

her alienage to the District government is indisputable. QED, one is a 'nonresident alien.'

An increasing number of would-be PTs (Previous Taxpayers) are submitting Form W-8 to their employers, in this regard. The reason will be clear upon reading this excerpt from the **General Instructions** of this **Certificate of Foreign Status**:

> Use Form W-8 or a substitute form containing a substantially similar statement to tell the payer…that you are a **NONRESIDENT ALIEN** individual, **foreign entity**, or **exempt foreign person not subject to certain U.S. information return reporting or backup withholding rules**...For purposes of this form, you are an "exempt foreign person" for a calendar year in which: **1**. **You are a nonresident alien individual**…**2**. You are an individual who has not been, and plans not to be, present in the [federal District] United States for a total of 183 days or more during the calendar year, and **3**. You are neither engaged, nor plan to be engaged during the year, in a [federal] U.S. trade or business that has effectively connected gains from transactions with a broker or barter exchange…. Payments to account holders who are foreign persons (nonresident alien individuals, foreign corporations, partnerships, estates, or trusts) generally are **not required to have a TIN**, nor are they subject to any backup withholding because they do not furnish a TIN to a payer or broker. However, foreign persons with income effectively connected with a trade or business in the [federal] United States (income subject to regular (graduated) income tax), must have a TIN. (Emphasis added.)

Performing this simple act establishes that this **non-immigrant**, non-naturalized, freeborn **state Citizen/ American** is someone to whom 26 CFR § 1.871-7(1) applies—wherein it states:

> a nonresident alien individual…**Is Not Subject To The Tax Imposed By Section 1**. (i.e., Subtitle A **Income Taxes,** Part 1 **Tax on Individuals.** Emphasis added.)

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14. The Brushaber case.

If this case had been given its justly deserved attention and correctly interpreted, most Americans would never have had any federal tax worries!! And, while most seem to think that the Brushaber case was written by Chief Justice Edward D. White in a most enigmatic and tortuous prose, we have one of the clearest and most lucid expositions imaginable in Treasury Decision 2313, which was promulgated a few months later, in order to implement this Court decision. In this TD, the government is uncharacteristically unambiguous, unequivocal, undisguised, and expresses its points clearly and succinctly. (Please see the Appendix for the complete document…one of the most important parts of this paper.)

In *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1, the Supreme Court affirmed on January 24, 1916 that the District 'United States' could tax income of nonresident aliens—in this case, Mr. Brushaber—that was derived from sources within the District 'United States.'

Fact # 1. In the case, just as in his Complaint, Frank R. Brushaber swore to being "a citizen of the State of New York and a resident of the Borough of Brooklyn, in the City of New York"—and the Court agreed with this vital point. Indeed, the nonresident aliency of Mr. Brushaber is the whole raison d'être for the promulgation of TD 2313, necessitated by this case.

Later, the government tried to say that he was an NRA by virtue of the fact that he was native to France. But that is ridiculous, for that would make him a 'resident alien.' For he lived and worked in New York…making him, eo ipso, a nonresident of the 'United States' and alien to its jurisdiction.

No, the Court concurred totally with his self-proclaimed status as being a nonresident alien. What they didn't agree with was that the Union Pacific RR Co. was also such.

Fact # 2. The Union Pacific RR, the Court proclaimed, **was** a resident of the District United States. Mr. Brushaber made the mistake in his Complaint of not realizing that Utah was still a territory when The Union Pacific was incorporated, on July 1, 1862, by an Act of the U.S. Congress, making it domestic to the District United States. Had Utah then been a state of the union, he would have won his case.

I believe it fair to say that the case hinges only on the establishment of these two facts—which, when fairly read, are absolutely incontestable, and permissive of no multiple interpretations. For, on the one hand, as you have seen, in 26 USC 872 **Gross Income,** quoted above: "In the case of a nonresident alien individual…gross income includes **ONLY—(1) gross income which is derived from sources within the United States**…" (Emphasis added.)

On the other hand, you might also recall: "An individual is a nonresident alien if such individual **is neither a citizen of the United States nor a resident of the United States**." (26 USC 7701(b)(1)(B). Emphasis added.)

And, reading the case and the TD, one sees that beyond any doubt both the Supreme Court and Secretary of Treasury are interpreting the term 'United States,' in the above two quotations, to mean precisely what I have been saying it means…not the whole country, but the territorial or District United States, exclusively.

The circumstances were that a cash dividend had been declared on stocks and bonds of the Union Pacific RR Co. owned by Frank Brushaber, and he believed that it was unconstitutional to claim that he owed income tax on this money, due to the undisputed fact that he was outside the *forum contractus*, and he mistakenly believed the Union Pacific was, as well. As you are now in a position to agree, the Court correctly ruled otherwise, as quoted above in section 10. For, as a foreigner, availing himself of the privilege of earning income from a 'domestic' (i.e., District U.S.) corporation, he was obligated to pay an excise tax. As Justice White put it in this case:

> [T]he conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that **taxation on income was in its nature an excise entitled to be enforced as such** .... (Emphasis added.)

The Court's finding that it was perfectly constitutional to levy an Income Tax from Brushaber has been the principal evidence the IRS chooses to throw at everyone who doubts that both the 16th Amendment, and the imposition of income tax on basically everyone, is constitutional.

Actually, the 16th Amendment is something of a non-issue, since the Supreme Court has ruled several times that this Amendment in no way alters any taxing powers of the United States. (I say 'something of' because public perception overrides the legal facts—together with unchallenged misinterpretations of some Appellate Courts.)

And, while many are railing over the fact that it was never lawfully ratified, I know of very few who claim that it, or the IRC, is unconstitutional—when lawfully applied, as in the instant case. Those who really understand Title 26, hope it never changes—and, of course, it can not substantially do so, and remain constitutional. For, with the help of TD 2313, it should be clear to those who can and will read—which, unfortunately, limits the field—that very few Americans really are obligated to pay any income tax…if they are careful as to how they structure their lives.

Of course, even if they were to make some investment in a U.S. corporation, like Frank B. did, they would only owe tax on that particular portion of their total earnings…if the rest of their income derived from outside the federal zone.

It goes mostly unnoticed that his dividend money earned in the District United States is all that the court is saying that Brushaber is obligated to pay…**not what he earned while living and working in New York!!** There, the U.S. has no jurisdiction to impose an income tax, and the Court well knew it. For, he was not a 'U.S. citizen.'

I would be inexcusably remiss and derelict if I didn't warn you of the egregious twisting of the facts in another interpretation—**indeed, this, or something roughly similar, is forced on those who still hold onto the definition of a 'U.S. citizen' as being synonymous with 'American'**…which is how the government would like you to believe it is to be interpreted in the Internal Revenue Code.

Although the following is not the only incorrect presentation of the Brushaber case and TD 2313, it is the worst one I could imagine, and it is repeated verbatim on a number of websites:

> [I]f you look this case up and read it [**which I would advise the writer doing**], you will see that the Supreme Court tells Frank Brushaber (an American citizen) [**right; not a U. S. citizen**] that the tax IS Constitutional (as an indirect excise) and that he (Brushaber) has to pay it (the income tax). [**Right; *HE* has to pay it…not act as a withholding agent, who withholds from some other person, as you state below**.] The IRS relies on, and cites, this Court ruling, as absolute proof that the income tax IS CONSTITUTIONAL. AND THEY ARE RIGHT. [**Correct so far**] HOWEVER, Frank Brushaber, a citizen, FILED THIS LAW SUIT ON BEHALF OF HIS FOREIGN PRINCIPALS, FROM WHOM HE WAS REQUIRED TO DEDUCT AND WITHHOLD INCOME TAX AS THEIR (the foreigners') US (withholding) AGENT. **[I can not imagine where they dreamed this up from; he was a shareholder, not a withholding**

> **agent**.] FRANK GOT TOLD TO PAY THE TAX ON THE INCOME OF FOREIGNERS, NOT HIS OWN INCOME. [**It was his own Income Tax that he didn't want to pay. And, *HE* was the foreigner in the case; the RR Co. was domestic.**] And Treasury Decision 2313 clearly [**apparently not to you!**] shows the orders resultant within the IRS as a result of this Supreme Court decision. THIS IS A CASE ABOUT THE TAXATION OF FOREIGNERS [**right!**] WHO HAVE NO RIGHTS and enjoy a government granted PRIVILEGE in being allowed access to the American markets to earn money. [**Correct for non-American immigrants; but, for Americans, as this case proves, the privileged area or domain is the District U.S. only, not the 50 states.**] IT IS NOT A CASE RELATED TO THE TAXATION OF A CITIZEN'S OWN INCOME EARNED BY RIGHT. [**The earnings involved were not such, of course, but by extrapolation it has direct relevance to helping determine one's income earned by right.]** IT IS A FUNDAMENTAL FRAUD TO MISREPRESENT THIS CASE AS APPLICABLE, OR RELATED, TO THE ISSUE OF TAXATION OF CITIZENS [**that is precisely who it is about—non-federal state Citizen/Americans, not resident in the District U.S. and, since not being totally under its jurisdiction, an alien thereof…in other words, a nonresident alien**], AS THE IRS HAS DONE FOR OVER 60 YEARS !!! (This is copied from jerseyguy.com/brushaber.html. All emphasis was in the original. Condensed into one paragraph.)

It was stated above that Frank Brushaber "filed this law suit on behalf of his foreign principals." Actually, in his Bill of Complaint, filed on 3/13/14, with the District Court of the United States, Southern District of New York, he

> brings this his bill against Union Pacific Railroad Company, a corporation and citizen of the State of Utah [**wrong, see above**] having its executive office and a place of business in the Borough of Manhattan, in the City of New York, and the Southern District of New York [**but its residence and tax home in the District of Columbia**] ***IN HIS OWN BEHALF* and on behalf of any and all of the stockholders of the defendant** Union Pacific Railroad Company who may join in the prosecution and contribute to the expenses of this suit. (Emphasis added.)

For the average American this should be, beyond contention, the most momentous, and consequential Supreme Court case ever tried…together, of course, with the beautifully lucid TD 2313, which implements it. For, they nail down two major points: the unambiguous and unarguable definition of the 'United States,' and the income tax obligations of most Americans—due to their relationship to this particular 'United States'—namely, NONE.

It seems almost beyond belief that these two precious documents were ignored by the American taxpayer, at the time. Reading them today, it is indeed unfathomable that they did not become a watershed event, completely precluding the events that have ensued. As it happened, however, not much happened until over half a century later. But, since then, many thousands of previous taxpayers have elected out of the system. In section 2 I mentioned where the code permitted this, at 26 USC 6013 **(g) Election to treat nonresident alien individual as resident of the United States (4) Termination of election (A) Revocation by taxpayers,** which allows a nonresident alien to re-establish his/her

previous status (one time only—see subsection 5), after having knowingly or unknowingly elected to "**be treated as a resident of the United States**." (6013(g)(1).) In other words, this is an escape hatch to get out of the system that one almost always inadvertently entered, when filing his/her first Form 1040 in order to get a refund, at the age of 14. One thereby declared oneself a resident of the District United States, as well as a U.S. citizen, for tax purposes. But, Section 6013 allows one to revoke this uninformed choice. I won't go into why such relief must be written into statutory law, but believe me, they wouldn't do it if they didn't need to.

After pondering the matter, I have concluded that it is incumbent upon me to at least reveal that there is, as I just discovered two weeks ago (this is July, 00) a company that takes people through this process—by writing a minimum of 22 letters!—and with results guaranteed. I spoke with the founder, as well as reading the company's sufficiently extensive literature—which was in absolutely precise agreement with the interpretation in the instant paper. I found him to be a very knowledgeable, sympathetic, and easygoing individual, and I have no reason to doubt him when he says that his company has experienced over 400 successes, in less than a year…and no failures. After all, why should it, it is based on IRC regulations and each individual's true state of affairs?

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15. A brief interlude on the plain meaning rule.

Understanding the precise wording of statutes or the code and its regulations, as above, is of utmost importance. For

> no citizen shall be imprisoned or otherwise detained by The United States except pursuant to an act of Congress. (18 USC § 4001(a))

So, at least theoretically, one is on safe grounds if one abides scrupulously by the words of Congressional laws. In *Gould v. Gould*, 245 US 151, the Supreme Court states that the courts must do the same:

> In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge
>
> their operation so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the government and in favor of the citizen. (Emphasis added.)

The 9th Circuit, in 1986, expands on this definitively, I believe:

> We begin our interpretation by reading the statutes and regulations for their plain meaning. The **plain meaning rule** has its origin in U.S. v. Missouri Pacific Railroad, 278 U.S. 269 (1929). There the Supreme Court stated that "where the language of an enactment is clear and construction according to its' terms does not lead to absurd or

> impracticable consequences, the **words employed are to be taken as the final expression of the meaning intended**"...The principle was more recently affirmed in Dickinson v. New Banner Institute, Inc., 460 U.S. 103,103 S.C. 986, 74 L.Ed.2d 845 (1983), rehearing denied, 461 U.S. 911, 103 S.C. 1887, 76 LEd.2d 815 (1983), where the Court stated, "In determining the scope of a statute, one is to look first at its language. If the language is unambiguous, ... **it is to be regarded as conclusive** unless there is a clearly expressed legislative intent to the contrary." *United States v. Varlet*, 780 F2d 758 at 761. (Emphasis added.)

It is, of course, a struggle to compel the IRS to follow its own rules and regulations…as regards, for example, the voluntary nature of submitting a Form W-4. They will give in on this, but usually not without a fight.

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16. 'U.S. residents' and 'state Citizens.'

In 1957 was published the second volume of an extremely important study, put out by the federal government: **Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas with States. A text of the Law of Legislation Jurisdiction.** It established, in painstaking detail, that **only persons residing within the legislative jurisdiction of the U.S. Congress are 'residents' of that jurisdiction**—i.e., are '**U.S. residents**.' It is made exhaustively manifest that this Congress does not extend the jurisdiction of its legislative umbrella beyond the Constitutionally restricted boundaries of territories of the United States, "belonging to" its **"exclusive sovereignty" "in all cases whatsoever,"** e.g. the federal zone (D.C., the federal States, possessions, and enclaves). In other words, the powers of the federal government are limited to and specifically defined at 1:8:17 of the Constitution, where Congress can:

> exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square)…[which will] become the Seat of the Government of the United States, and exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings...

Of course, today it has got totally out of control, with the U.S. said to "own" over 900,000 square miles of territory in the union states!! (The size of Texas is 267,339 square miles.) But, this is another story. Suffice it to say, the fact that it has happened does not make it legal or lawful.

The state Citizen, then, is 'alien' to—is not subject to—the **exclusive** jurisdiction and sovereignty of the territorial United States. Of course the Frenchman who resides here must pay 'income tax,' but the American state Citizen is almost totally free therefrom. (I qualify this elsewhere.) Remember Matthew 17, 25-26?

> 'Tell me, Simon, from whom do earthly monarchs collect tribute money? From their own people, or from aliens ['others' or 'strangers,' in other translations]?' 'From aliens,' said

> Peter. 'Yes,' said Jesus, 'and **their own people are exempt**.' (KJV. Emphasis added.)

Most Americans are constitutionally exempt—just as sovereign state Citizens are exempt from State income tax, which is very clearly spelled out in the statutes…at least in those of the California Republic…as you will soon see.

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17. 'Resident alien,' 'reside,' 'domicile,' and more on 'resident.'

Having discussed 'nonresident alien,' I think that I should elaborate more on the '**resident**' part of it, as well as the terms '**resident alien,**' and '**reside**,' and '**domicile.'**

> The term 'resident' has not a technical meaning. In some statutes and for some purposes it means one thing, and in other statutes and for other purposes it means another thing." (*U.S. v. Nardello*, D.C. 4 Mackey 503. Also, see *Black's Law Dictionary*, art. 'residence', etc.)

This is true, but it isn't too hard to find a common thread running through its usage. Yet, for a full understanding there are a few collateral terms and factors that one must deal with.

To begin with, let's look at the 18th century classic of Emer De Vattel, *Law of Nations*:

> Residents as distinguished from citizens, **are aliens** who are permitted to take up a permanent abode in the country. (Section 213, 1758.)

This might help us to realize that 'resident' is really short for **'resident alien!'** It refers to someone who indicates a desire to remain in one state/nation/country (these words are synonymous in international law—which is what we are dealing with) while retaining a '**domicile**' and, usually, citizenship in another—i.e., **a 'resident is someone who is foreign to the state/nation/country in which they reside**, and, therefore, termed a 'resident alien'…though 'alien,' of course, is almost always left off. It would raise too many questions, to ask you on your application for a hunting license if you were a 'resident alien,' rather than a 'resident,' of the State! There are well over 200 million Americans who are 'resident aliens' where they live, because they claim to be, **and** in the eyes of the government **therefore are**, domiciled in the District U.S., where **ALL** federal 'U.S. citizens' are domiciled. Not where they live, but **where their legal tax home is**.

And, just where, precisely, is their legal tax home? One startling definition is found in Subtitle C **Employment Tax** 26 CFR 31.3121(e)-1(b), where it says:

> The term **'citizen of the United States'** includes [is limited to] a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa. (Emphasis added.)

State Citizens, of course, are domiciled in their non-corporate state, Republic, or Commonwealth. They never claim to be 'residents' in "the State of…" on corporate State license applications, etc. For this would be interpreted as them claiming to be a 'resident alien'—**always**! And, remember who is taxed? The foreigner, not the Citizen…at least not in our constitutional Republic.

Actually, one is not obligated, legally, even to pay sales taxes, if the purchases are taken out "of the State," into the Republic, say, by taking them to your living quarters, which is not in the federal zone. But, few businesses will sign the paper, without an O.K. from the Tax Board…and they won't give it. I've tried.

In brief, every American who classified him/herself as a corporate U.S. citizen, residing in one of the 50 corporate States is also considered to be a 'resident alien.' This is because, although s/he is residing 'in the State,' s/he is **domiciled in the federal zone and, therefore, is an alien**. QED, s/he is a resident alien, and is taxed on the privilege of residing 'in the State.'

(I analyze elsewhere the term of art, in detail. And you will see that—astonishingly!—it refers only to the federal territory in the geographical state…and that **you unknowingly perjure yourself in claiming to reside there**.)

State income tax is an excise tax, just like federal income tax…meaning it is payment for a privilege received.

> A foreign business corporation for venue purposes, 'resides' in [the] county where its registered office and…agent is located. (*State ex rel. Bowden v.Jensen*, Mo. 359 S.W. 2nd 343, 351) (Emphasis added.)

That is, **a resident is a foreigner**, here doing business in a corporate county.

Of course, if one were to live in, say, the Republic of California, rather than the corporate State of California, that would be another matter, altogether. One does this simply by declaring on a form that I understand every state provides (in California it is Form 590), that one is a 'resident' of, say, "California," *not* the "State of California." And, presto! it declares that his or her employer is no longer required to withhold any tax. Furthermore, the employer is instructed to keep this; not to send it to the tax office. In California this is the Franchise Tax board, where they are charged with collecting guess what? **"Resident Income Tax,"** i.e., from resident aliens, residents 'of the State,' not of California, California Republic, or California state.

Let me review. A resident of and in the territorial U.S. (usually the District of Columbia) includes everyone who is a non-visitor, i.e., who intends to remain for an extended length of time. That could be nonresident aliens from the states, who remain over 183 days in a given tax year; resident aliens, like Englishmen; and, of course, the citizens who live there. The first two categories are 'alien,' because they are domiciled elsewhere. After a year, say, the Citizen of California who returns to his/her state, reverts back to being a nonresident alien, with respect to the District United States. This is because s/he is domiciled (has his/her legal tax home) in California. S/he is alien to the federal zone, and no longer resident there. The Englishman remains a resident alien, no matter where he lives and works in America

—whether the federal zone or the 50 states. For, he is domiciled in England, and resident in America.

Now I will move on to some pertinent IRC and CFR sections relating to 'nonresident aliens.' This is quite important, of course, and is the reason why one submits a Form W-8 to one's employer (not the IRS). This should be obvious from 26 CFR 31.3401(a)(6)-1(b), which said:

> **Sec. 31.3401(a)(6)-1 Remuneration for services of nonresident alien individuals.**
>
> **Remuneration paid to a nonresident alien individual…for services performed outside the [federal] United States is excepted from wages and hence is not subject to withholding.** (Emphasis added.)

Or, from the l954 IRC section 6012:

> (a) GENERAL RULE—Returns with respect to income taxes under Subtitle A…(5) **nonresident alien individuals not subject to the tax imposed by §871…may be exempted from the requirements of making returns…** (Emphasis added.)

Again, in 26 CFR 1.871-7 **Taxation of nonresident alien individuals not engaged in trade or business [in the District U.S.]**:

> (a) Imposition of tax. (1) …a nonresident alien individual…**is not subject to the tax imposed by section 1 [of Subtitle A]**. (Emphasis added.)

Certainly**,** the 50 states are ruled out, by 26 CFR 1.911-2(g), which states that:

> The term "United States" when used in a geographical sense **includes [is restricted to—see below] any Territory under the [complete] sovereignty of the [federal] United States**…

Therefore, a state Citizen would be '**alien'** to that jurisdiction. And, not living in a federal zone, would be '**nonresident'** thereto. Therefore, **unless they claimed otherwise**, *as most do*, practically every American, in the 50 states, not working for the government (federal, State, or municipal) would be a '**nonresident alien**,' by default. For such state Citizens do not fall under the definition in 26 CFR 1.1-1 (c), which states that

> every person born or naturalized in the [territorial] United States and [completely] subject to its jurisdiction is a [U.S.] citizen.

Also, Section 2(d) of the IRC **Nonresident aliens** is quite clear and concise:

> In the case of a nonresident alien individual, the taxes imposed by sections 1 [individual graduated income tax] and 55 [alternative minimum tax] shall apply **only as provided by section 871 or 877**. (Emphasis added.)

Section 871(a) is for nonresident aliens who have a 30% tax imposed upon **earnings received from sources within the** [federal] **U.S.** Section 871(b) deals with **income effectively connected with a trade or business [as a federal government employee] within the [federal] U.S.,** or for one having a corporate office there, for which the regular Subtitle A graduated tax is imposed. Section 877, **Expatriation to avoid tax,** is of little relevance.

Therefore, as 26 USC 864(c)(4)(A) states:

> Except as provided in subparagraphs (B) or (C) [which have to do with tax liabilities of nonresident aliens and foreign corporations with offices **within** the federal zone]…**no income, gain or loss from sources without [outside] the [federal] United States [e.g., in the union states] shall be treated as effectively connected with the conduct of a trade or business within the United States.** (Emphasis added.)

Being a nonresident alien, of course, also affects withholding—Subtitle C. It states in 26 USC 3401(a) **Wages**:

> (a) For the purpose of this chapter, the term '**wages**' means all remuneration (other than fees paid to a public official) for services performed by an employee to his employer… except that **such term shall not include remuneration paid…(6) for such services, performed by a nonresident alien individual…** (Emphasis added.)

It is absolutely crucial to understand the meaning of the term of art '**wages**.' Like almost everything else in the code, it is spelled out, if one looks for it—with some exceptions, as was seen with the phrase 'several States.' But, here, it is out in plain sight. In 26 CFR 31.3401(c) **Employee** it states:

> …the term [employee] **includes** [only] officers and employees, whether elected or appointed, of the United States, a [federal] State, Territory, Puerto Rico or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also **includes** an officer of a [domestic, i.e., federal District] corporation." (Emphasis added.)

Of course, they try to confuse and confound matters by using the unmodified word of art 'State.' But, I hope I have adequately clarified that, above. '**Wages,' are earnings paid to federal government employees**—though the term 'Federal personnel,' as defined at 5 USC 552a(a)(13), is a more comprehensive category. These are those whom federal law applies to outside the federal zone, in the matter of 'wages,' as in all other matters:

> the term 'Federal personnel' means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

'Wages' are not compensation paid for the labor of a nonresident alien. This is further stressed in 26 CFR 1.1441-3 **Exceptions and rules of special application**, where it states:

> **(a) Income from sources without** [outside] **the** [federal] **United States.** …to the extent that items of income constitute **gross income** from sources without the [District] United States, **they are not subject to withholding**. (Emphasis added.)

How it is that this can be misinterpreted is beyond me!

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18. The Buck Act and its 'Federal areas.'

No delving into the meaning of the term 'state' or 'State' would be complete without mention of the Buck Act. Congress passed the "Public Salary Tax Act of 1939" (4 USC 111) with the purpose of taxing all federal and State employees, as well as those living and working in the federal zone. It became, thereby, municipal law for D.C. and the territories, etc. The next year the government pulled what many believe to be one of its most devious ploys: It passed the Buck Act (4 USC 104-110), Section 110(e) of which reads:

> The term Federal area means any **LANDS OR PREMISES held or acquired by or for the use of the United States or any department, establishment, or agency of the United States**; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State. (Emphasis added.)

This one sentence was the tinder box that ignited a much ballyhooed controversy about what the federal government could do and has done—i.e., the intent and meaning of the Act. Richard McDonald and Paul Mitchell have propounded the view that this Act sanctions the creation of 'Federal areas' within any State, such as has been done by the Social Security Board and the U.S. Postal Service, with their 2-letter designations for each State, like CA.

I don't read this from the Buck Act, personally. The ZIP code areas, for example, do refer to federal areas—not however, to "***F***ederal areas" of the Buck Act. I can certainly understand why a real stickler would balk at accepting mail at such an address, if s/he didn't want to admit to living in a federal area. But, firstly, it is certain that this is not a sufficient reason for obligating anyone to file a tax return. And, secondly, the Buck Act was simply not needed to establish such areas, and others. Every alphabet soup agency utilizes areas across the country, but they have no relationship to any "**lands or premises**" held by the federal government. I believe it is simply an administrative decision to form these areas. If I am wrong, then I must be shown proof in the few brief paragraphs of this short and simple Act.

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19. 'Includes' and more on 'resident.'

I have used the term '**includes'** many times, and since it is impossible to interpret the USC correctly without a proper understanding of this term, I will give some detailed attention to it's definition and usage in legal writings. I will start by focusing on **'resident,'** as found in the laws of the 'STATE OF CALIFORNIA'…although I am confident that only insignificant details will vary from corporate 'State' to corporate 'State.'

For example, in my case, I am not now, and never have been, a **resident** of the corporate STATE OF CALIFORNIA, because this term of art refers to one who lives on any federal territory located within the borders of California, such as a military base.

The word **resident** is a term of art that has a special meaning in the STATE OF CALIFORNIA CODE (which is how it is often written). The **General Provisions** of this Code, Section 17014, defines 'resident,' in pertinent part, as:

> 1. Every individual who is **in this state** for other than a temporary or transitory purpose.
> 2. Every individual domiciled **in this state** who is outside the state for a temporary or transitory purpose. (Emphasis added.)

Unfortunately, the above definition of resident is deceptive, because it must be understood that the phrase '**in this state'** in (1) and (2), is another term of art, which has a special meaning that is precisely defined in the Code's **General Provisions**, Section 6017, and **Assessments** Section 11205**:**

> 'In this State' or 'in the State' means within the exterior limits of the State of California and **includes** [is limited to] all territory within these limits owned by or ceded to the United States of America. (Emphasis added.)

(As shown above, this use of 'United States *of America*' is a constitutionally unauthorized usage, sometimes employed by the corporate federal 'United States,' **misleadingly to designate itself, or one of its agencies.** It **must not** be confused with the original meaning of that phrase, as found in the Declaration of Independence, and Article I of the still valid Articles of Confederation: "The title of this confederacy shall be '**The United States of America**.'"—which is the name of **the delegating authority**, not that **agency** [the 'United States'] to which the U.S. Constitution later delegated specific limited powers within the states, at 1:8, or plenary powers within the federal zone, at 4:3:2.)

The above definition of 'in this state' still does not clarify the meaning of the term 'resident,' however, until the special meaning of yet another *painted word*, '**includes**,' is understood.

While it would be easy to assume that the above definition means "all land within the borders of California, **and does not exclude** federal territory therein," the proper interpretation is fundamentally and crucially different! What is really meant, is that land '**in this State'** refers **only** to "territory within these limits owned by or ceded to the United States of America" (i.e., **an agency** of the corporate federal U.S. government).

I believe that it is beyond contention that the use of 'includes' is meant to mislead and deceive. The law writers prove themselves to be able to be completely unambiguous when a forthright statement is called for—as 26 USC 6103(b)(5) or 4612(a)(4), quoted in section 6, above. However, the correct interpretation of this term, as used **in all corporate State and federal codes and regulations,** has been made quite clear, if one probes deep enough.

For instance, if one goes back to the January 1, 1961 revision of Title 26 Code of Federal Regulations, at Section 170.59, it states:

> 'Includes' and 'including' shall not be deemed to exclude things other than those enumerated [i.e., by the example given…by the class example] **which are in the same general class**." (Emphasis added.)

The example represents the class…and that class only! Which is to say, if Puerto Rico is given as a class example, this would indicate that no union state, being party to the Constitution, could be referred to, since Puerto Rico is not yet, at least, a union state.

As the Supreme Court has put forth several times, the statutes must be assumed to be written exactingly, and, therefore, taken to mean precisely what they say. (This will be painfully obvious, when we read Public Law 86-624, below.) So, no meaning can be imputed into their words, other than specifically what is written. Therefore, what is excluded must be interpreted to mean that it was intended to be excluded.

This revision of 1961, is where this essential qualification of "includes" was introduced, although this concept has been accepted in law for millennia. For example, in the maxims**:** the *Ejusdem generis* rule (of the same kind, class, or nature), as well as *Noscitur a sociis* (it is known by its associates) and *Inclusio unius est exclusio alterius* (the inclusion of one is the exclusion of another).

It is interesting, although not unexpected or important, that it was watered down in the most recent revisions, for the older version still has legal force and effect. Now, the code tries to disguise things by saying, in 26 USC § 7701(c) **Includes and Including**:

> The terms 'includes' and 'including' when used in a definition contained in this title shall not be deemed to exclude other things **otherwise within the meaning of the term defined**."

This, of course, is a desperate effort—which, for the most part has succeeded!—to obfuscate the earlier phrasing: "which are in the same general class." But, for anyone with half a mind, it is seen to be just the same old smoke and mirrors.

A Supreme Court ruling supports this in *Montello Salt Co. v. Utah*, 221 U.S. 452 (1911), at 455-456):

> "The determining word is, of course the word 'including.' It may have the sense of addition, [221 U.S. 452, 465] as we have seen, and of 'also;' but,

> we have also seen, 'may merely specify particularly that which belongs to the genus.' Hiller v. United States, 45 C. C. A. 229, 106 Fed. 73, 74. It is the participle of the word 'include,' which means, according to the definition of the Century Dictionary, (1) 'to confine within something; hold as in an inclosure; inclose; contain.' (2) 'To comprise as a part, or as something incident or pertinent; comprehend; take in; as the greater includes the less; . . . the Roman Empire included many nations.' 'Including,' being a participle, is in the nature of an adjective and is a modifier."

Even more interesting, considering its source, is **Treasury Definition** 3980, Vol. 29, January-December, 1927, pages 64 and 65, where the terms 'includes' and 'including' are defined as follows:

> (1) To comprise, comprehend, or embrace…(2) To enclose within; contain; confine…But granting that the word 'including' is a term of enlargement, it is clear that it only performs that office ***by introducing the specific elements constituting the enlargement.*** It thus, and thus only, enlarges the otherwise more limited, preceding general language… The word 'including' is obviously used in the sense of its synonyms, **comprising**; comprehending; embracing. (Emphasis added.)

In the Montello case, above, the U.S. Supreme Court, puts its cachet to this view:

> "...***The court [the Supreme Court of the State] also considered that the word 'including' was used as a word of enlargement, the learned court being of opinion that such was its ordinary sense. With this we cannot concur. It is its exceptional sense, as the dictionaries and cases indicate.*** We may concede to 'and' the additive power attributed to it. It gives in connection with 'including' a quality to the grant of 110,000 acres which it would not have had,-the quality of selection from the saline lands of the state. And that such quality would not exist unless expressly conferred we do not understand is controverted. Indeed, it cannot be controverted...."

Some 80 court cases have chosen the restrictive meaning of 'includes,' etc., such as this one last example:

> Includes is a word of limitation. Where a general term in Statute is followed by the word 'including' the primary import of specific words following quoted words is to indicate restriction rather than enlargement. (*Powers ex rel Dovon v. Charron R.I.*, 135 A. 2nd 829)

To elucidate more clearly the 1961 definition, above**:** 'includes' and 'including' shall not be deemed to include things not enumerated, **unless they are in the same general class.** For instance, 'State,' in 26 USC 7701(10)**:** "The term 'State' shall be construed to include the District of Columbia…" Here, "the District of Columbia," without any doubt, is not "in the same general class," category, or genus as Missouri or California—it is a federal "State." The District of Columbia has a totally different jurisdictional set up than a union state. It is under the absolute jurisdiction of the 'U.S.,' and the states

are not. Only in the federal zone does the U.S. have *jura summi imperii,* right of supreme dominion, complete sovereignty.

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20. Jurisdiction and more on 'State.'

And, just what is '**jurisdiction**?' It was defined as "the power of a court to apply the law and to enter and enforce judgement," in *Jones v. Brinson*, (N.C.) 78 S.E. 2d 334, 337. Or, it was said to be "the power to declare the law." (*Bullington v. Angel*, 220 N.C. 18) The U.S. obviously cannot do these things in a union state. It cannot "**exercise exclusive legislation in all cases whatsoever**," in the 50 states, as the Constitution says it can in the federal zone:

> It is a well established principle of law that all federal legislation applies only **within the *territorial* jurisdiction** of the United States unless a contrary intent appears. *Foley Brothers, Inc. v. Filardo*, 336 U.S. 281 (1948) (Emphasis added.)
>
> 'Act of Congress' includes [is restricted to] an act of Congress **locally applicable** to and in force in the District of Columbia, in Puerto Rico, in a [federal] territory or in an insular [federal] possession. Rule 54(c), **Federal Rules of Criminal Procedure**. (Emphasis added.)
>
> **It is clear** that Congress, as a legislative body, exercises two species of legislative power: the one, limited as to its objects but extending all over the Union; the other, an absolute, exclusive legislative power over the District of Columbia." *Cohens v. Virginia*, 6 Wheat. 264, 5 L.Ed. 257. (U.S. Supreme Court, 1821. Emphasis added.)
>
> [There can] be no complete [legal] code for the entire United States [of America, i.e., the union states], because the subjects which would be regulated by the code in the [union] [s] tates **are entirely outside the legislative authority of Congress**. (Justice Walter S. Cox, of the Supreme Court of the District of Columbia, in a speech to the Columbia Historical Society, 12/5/1898. Emphasis added.)
>
> A State does not owe its origin to the Government of the United States, in the highest or in any of its branches. It was in existence before it. It derives its authority from the same pure and sacred source as itself: The voluntary and deliberate choice of the people...**A State is altogether exempt from the jurisdiction of the Courts of the United States, or from any other exterior authority**, unless in the special instances where the general Government has power derived from the Constitution itself. *Chisholm, Ex'r v. Georgia*, 2 Dall. 419, 448 (1794). (Emphasis added.)

That is, Congress can only exercise such power when carrying out the constitutional mandates of the **special** legislative jurisdiction authorized at 4:3:2, where it states that it "shall have Power to dispose of and make all needful Rules and Regulations respecting the **territory or other Property belonging to the United States**…" (Emphasis added.)

Surely, not South Dakota! To operate there, at all, would require **general** legislative powers—those 17 that are specifically and precisely set forth at 1:8 of the U.S. Constitution…and, hence, referred to as the enumerated powers of the United States.

For: "Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. (*Sandberg v. McDonald*, 248 U.S. 185.) And: "All legislation is prima facie territorial." (*American Banana Co. v. United Fruit Co.*, 213 U.S. 347.)

Or look at 18 USC § 5:

> The term 'United States,' as used in this title in a territorial sense, includes all places and waters, continental and insular, **subject to the [complete] jurisdiction of the United States**, except the Canal Zone.

Having established, above, how the misleading term 'includes' **must** be interpreted in all the codes, it follows, then, incontrovertibly, that "in this State" means those areas which are not only within California's borders, **but are also owned by or ceded to the corporate United States**. Which means that since they are outside of the general class, then ***any and all non-federal areas—like where i live—are not 'in this state.'***

Therefore, the term 'resident,' in the Code—of any State or in the 48 U.S. titles—means someone who is in a federal territory "within the exterior limits of [say] the State of

California" (such as the Presidio) for other than a temporary or transitory purpose—***OR ELSE CLAIMS TO BE*****,** by declaring him/herself to be a 'resident of the State' (as almost everyone does).

In light of the above, one is reminded of a remark by Jeremy Bentham (1748-1832) about words of art, which he defined interestingly:

> When **leading terms** [as he calls them] are made to chop and change their several significations, sometimes meaning one thing, sometimes another, at the upshot perhaps nothing, and this in the compass of a paragraph, one may judge what will be the complexion of the whole context. (Emphasis added.)

I like a phrase that is not commonly encountered, and that I have never seen used in this context: 'weasel word'—or here, perhaps, 'weasel phrase.' It is perfect, indeed nonpareil, for indicating the usage of terms of art, such as 'United States,' 'State,' or 'resident.' To quote *Webster's New Collegiate Dictionary*:

> [fr. the weasel's reputed habit of sucking the contents out of an egg while leaving the shell superficially intact]: a word used in order to **evade or retreat from a direct or forthright statement of position.**" (Emphasis added. Brackets in original.)

Look in the General Provisions, section 6017:

> **'In this State' or 'in the State' '**In this State' or 'in the State' means within the exterior limits of the State of California and includes [is restricted to] all territory within these limits **owned by or ceded to the United States of America**." (Emphasis added.)

For example, if you live in the Presidio. This is repeated verbatim in the **State of California Revenue and Taxation Code**, section 11205. And, section 17018:

> **'State' '**State' includes [is limited to] the District of Columbia, and the possessions of the United States. (Emphasis added.)

Or, in General Provisions, section 18:

> **'State'** 'State' means the State of California [not California, California state, or California Republic], unless applied to the different parts of the United States. In the latter case, **it includes [only] the District of Columbia and the territories**.

Do you get that? If reference is made to the States of the United States, **this encompasses only D.C. and the territories**. **Those are the only states of the federal corporate district U.S.!** And, don't be thrown by 'State' meaning 'State of California.' Reference is to the corporate, contract, private law State. They exist side by side. The Governor and all other s/State officials wear two hats—one for when they are involved in corporate State activities, and one for when they are occasionally involved in common law actions. And, to really confuse matters, there are those, like Dave Hinkson, who believe that the corporate States are sub-corporations of the District U.S.

Of course, back in 1869, when the Court in Washington Territory said: "A Territory is not a State, nor is the word State used as synonymous with Territory," things were quite different than today. (*Smith v. United States*, 1 Wash. T. 262.)

Remember Form 590, where one declares oneself a **resident of 'California?'** This means that then one would **not be a resident of the 'State of California,'** and thereby **federalized** to a status where one must pay both federal and corporate State taxes. If the reader requires more than this for entertainment, s/he has a higher threshold of enjoyment than I do!

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21. More on 'resident' and 'nonresident.'

It is ultimately necessary to quote 26 USC 865(g)(1)(A) and (B) in order to understand fully what the code means by 'resident' and 'nonresident':

> "(A) **United States resident**. The term 'United States resident' means—(i) any individual who—(I) is a [federal] United States citizen or a resident alien and does not have a tax

> home (as defined in section 911(d)(3)) in a foreign country [like way back in Nebraska], or (II) is a nonresident alien and has a tax home (as so defined) in the [federal] United States, and (ii) any corporation, trust, or estate which is a United States person (as defined in section 7701(a)(3)). (B) **Nonresident**. The term "nonresident" means any person other than a [District] United States resident. "
>
> (Emphasis added.)

This probably requires exegesis! First, (i)(I). This means that to be a" U.S. resident" you have to be either a citizen of the District U.S. (i.e., D.C., the territories or enclaves) or an alien, such as a union state Citizen or, say, a German, not having his business location without (i.e., outside) the District U.S. —e.g., in Missouri or Germany. That is, a sovereign state Citizen can temporarily be a "U.S. resident," for tax purposes, that year, and not lose his state Citizen status, when he changes his tax home back to his home state. (II) A "nonresident alien" (i.e., someone who is neither a citizen or resident of the [corporate] U.S., as defined in 26 USC 7701(b)(1)(B), above) can also be a "U.S. resident" if and when his tax home is in the District U.S. And (B) "nonresident" means just what the forgoing code section also said—someone who is not a District U.S. resident, such as a state Citizen or a non-immigrant Japanese…no matter where s/he is living.

A state Citizen/nonresident alien, however, can owe "income tax" to the federal government, without having his tax home there. The IRC, at section 872(a) **General rule**, states:

> **In the case of a nonresident alien** individual…**gross income** includes ***only***—(1) gross income which is ***derived from sources within*** the [District] United States and which is not effectively connected with the conduct of a trade or business within the [federal] United States [like interest on government bonds], and (2) gross income which is effectively connected with the conduct of a trade or business within the [corporate] United States." (Emphasis added.)

Or 26 USC § 871(b)(2):

> **Determination of taxable income**. In determining taxable income…gross income includes only gross income which is effectively connected with the conduct of a "trade or business," within the [District] United States.

Incidentally, one reads in 26 USC 7701 (a)(26): "**Trade or business**. The term 'trade or business' includes [i.e., is restricted to] the performance of the functions of a public office"—i.e., in a general sense, anyone working for the government.

By extension, one can see that for a District U.S. citizen the situation is just the reverse of that of a state Citizen. That is, if a federal U.S. citizen earns remuneration from without the District U.S., in one of the 50 foreign '**countries**' called union states, then that is correctly termed "*foreign earned income*,"—which requires Form 2555…titled just that, **Foreign Earned Income.** This, of course, is almost universally misinterpreted, because of the intentionally misleading ambiguity of the terms of art 'State'

and 'United States'.

This is made crystal clear, however, in the **Instructions for Form 2555**:

> Foreign Country. A foreign country is any territory (including the air space, territorial waters, seabed, and subsoil) **under the sovereignty of a government other than the United States** [like Iowa or Illinois]. It does not include the U.S. possessions or territories. (Emphasis added.)

Volume 20 of Corpus Juris Secundum § 1785, states that the United States is a foreign Corporation with respect to a State. Leaving aside numerous case cites, one can go to the code itself—28 USC 297:

> **Assignment of judges to courts of the freely associated compact states…**(b) The Congress consents to the acceptance and retention by any judge so authorized of reimbursement from the ***COUNTRIES*** referred to in subsection (a)…, [where it indicates that they are speaking of] **the freely associated compact [union] states**. (Emphasis added. Other similar quotes will be found at the end of this paper.)

Lastly, *Black's Law Dictionary*, 6th edition, defines 'Foreign state' as "A foreign country or nation. The several United States are considered 'foreign' to each other except as regards their relations as common members of the Union."

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22 Private international law.

Americans, especially, when they have to do with the law, must learn to think 'internationally.' As well put in 16 Am Jur 2d, art. Conflict of Laws, § 2:

> Private international law assumes a more important aspect in the United States than elsewhere, for the reason that the several states, although united under the same sovereign authority and governed by the same laws for all national purposes embraced by the Federal Constitution, are otherwise, at least so far as private international law is concerned, in the same relation as foreign countries. The great majority of questions of private international law are therefore subject to the same rules when they arise between two states of the Union as when they arise between two foreign countries… (Emphasis added.)

In the words of the Rhode Island Supreme Court:

> In the sense of public international law, the several states of the union are neither foreign to the United States nor are they foreign to each other. But such is not the case in the field of private international law….That it is the settled view of the [United States] Supreme Court that, **on questions of private international law, the states are foreign to the**

> **United States** would seem to be clear from the decision in State of *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265. *Robinson v. Norato*, 71 R.I. 25, 643 A 2d 467 (1945). (Emphasis added.)

To clarify:

> Public international law deals with the authority the federal government has been granted to represent American interests OUTSIDE of American society. Private international law deals with the authority the federal government has WITHIN American society. The U.S. Constitution grants to the federal government the exclusive right to represent American interests to nations outside American society. But there is no such authority granted to the federal government when dealing with the states of the Union and the people who live therein. Thus, the United States has no inherent legislative jurisdiction within the states of the Union except for those things that have been specifically delegated to the United States government in the U.S. Constitution. Remember, the United States government is a federal government with limited authority, not a national government (From an email transmission by Gerald Brown, 2/2/2000)

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23. 'Tax payer,' 'taxpayer,' and 'nontaxpayer.'

I should point out that although we are all 'tax payers,' only some are 'taxpayers.' The 'tax payer' pays countless taxes every day…dozens on a loaf of bread, alone, as well as excise and sales tax on liquor, etc. But a 'taxpayer,' as defined in the IRC, at 7701(a)(14), is "any person **subject to** any internal revenue tax," and again at 1313(b): "Notwithstanding section 7701(a)(14), the term 'taxpayer' means any person **subject to** a tax under the applicable revenue law." (I never understood the need or point of "notwithstanding…")

And, concerning this, it is very important to note well the words of the decision in *Economy Plumbing Co. v. U.S.*, 470 F 2d 585:

> "Persons who are not taxpayers are not within the system and can obtain no benefit by following **procedures prescribed for taxpayers**." (At 589. Emphasis added.)
>
> "The term 'taxpayer' in this opinion is used in the strict or narrow sense contemplated by the Internal Revenue Code and means a person who pays, overpays, or is subject to pay his own personal income tax. A **'nontaxpayer'** is a person who does not possess the foregoing requisites of a taxpayer." (At 590, emphasis added.)
>
> "The revenue laws are a code or system in regulation of tax assessment and collection. **They relate to taxpayers and not to nontaxpayers**." (At 589, emphasis mine. I find it amusing that "nontaxpayer" is red-flagged by my spellchecker. That's how brainwashed we are.)

24. More on 'foreign earned income' and Form 2555.

Back to Form 2555 **Foreign earned income**. A 'U.S. person'—i.e., 'a citizen or resident of the United States'…as well as a domestic (i.e., District U.S.) partnership, corporation, estate, or trust (26 USC § 7701(a)(30))—residing and working in, say, New Mexico, certainly has income earned outside his domicile/legal tax home in the federal zone. It is, therefore, 'foreign earned income,' and requires the filing of Form 2555. A state Citizen of New Mexico would owe nothing on his earnings from within his/her state. Only if he received remuneration from D.C. or some other tax treaty country. Not every country—it must be tied in with the District U.S. tax laws, **by tax treaty**. S/he can keep what s/he earns in Nepal, because they have no tax treaty with the U.S. Remember, that **a state citizen nonresident alien American's 'gross income,' to be taxable, must be derived only from sources within the District U.S., or a tax treaty country, not from his state of domicile, in Kentucky.** (The requirements attending the 'gross income' of a U.S. citizen are addressed in section 26.)

Let me back up. One must begin with 26 USC 6012 "**Persons required to make returns of income. (a) General rule.** Returns with respect to income taxes under **subtitle A** shall be made by the following: …" (Last emphasis added.) This is the only place in the IRC where a filing requirement for Subtitle A 'individual income tax' is made reference to.

Better yet, let's go to the regulations for this section…1.6012-1 **Individuals required to make returns of income**:

> a. **Individual [U.S.] citizen or resident**—(1) In general. Except as provided in subparagraph (2) of this paragraph, an income tax return must be filed by every individual [i.e., juristic person] for each taxable year beginning before January 1, 1973, during which he receives $600 or more of gross income, and for each taxable year beginning after December 31, 1972, during which he receives $750 or more of gross income, ***IF*** **such individual is**: (i) A citizen of the [territorial] United States, whether residing at home [in the federal zone] or abroad [outside the borders of the USA or in one of the 50 states], (ii) **A resident of the [territorial] United States** even though not a citizen thereof, or (iii) An alien bona fide resident of Puerto Rico during the entire taxable year. (Emphasis added.)

In other words, § 6012 only requires **one** of the above 3 categories of persons to file a return. **If** one were one of these, subparagraph (6) would, then, seem to apply…and so hundreds of millions of taxpayers have believed, for many decades:

> (6) Form of return. Form 1040 is prescribed for general use in making the return required under this paragraph.

This is not exactly incorrect, but it is only part of the story.

The Office of Management and Budget (OMB) provided a Document Control Number of 1545-0067, with respect to 26 CFR 1.1-1 **Tax imposed**, **as well as** 1.6012-0 **Persons required to make returns of income.** If one goes to the cross tables at 26 CFR 1.602.101, where the appropriate form is matched to every section in the IRC that requires one, s/he will find that the only form required and approved by the OMB is not Form 1040, but Form 2555 **Foreign earned income.** However, it does specify thereon: "Attach to Form 1040" (although a Form W-2 may be used, instead). **Form 1040 is merely a worksheet and supplemental to Form 2555.** So, it is, indeed, for "use in making the return," as stated above. It is, however, not usually used exclusively—only collaterally, with Form 2555. And, when so used, it is for the purpose of claiming a refund, certain credits or deductions. If no such deductions are claimed, then the Form 2555 is used alone…which explains why a Form W-2 can replace Form 1040.

One can see in 26 CFR 1.602.101, above, that immediately following Section 1.1-1 comes Section 1.23-5, whose OMB Document Control Number, 1545-0074, just happens to require Form 1040! And, this is to be used for the very important purpose of obtaining a tax credit, through "[c]ertification that an item meets the definition of an energy-conserving component or renewable energy source property." And, there are a number of other places in the cross tables where Form 1040 is exclusively paired to a given section in the IRC…that are almost all for the obtaining of a credit, refund, or deduction—not to discharge a tax liability—with the exception of its use by federal employees for a certain purpose (see 4 USC 111), and by fiduciaries of nonresident aliens, to be mentioned shortly.

To repeat, as regards filing a return for Subtitle A tax, both of these forms must be filed **together**…that is, if one is a federal citizen and wants deductions on income earned without (outside) the District United States. Indeed, there isn't even a place to affix one's signature on Form 2555, although it does, understandably, request one's social security number, and "Name shown on Form 1040," or, of course, Form W-2, if one is claiming no deductions.

As I have indicated, however, Form 1040, can be used alone. For example, the lately oft-quoted Treasury Decision (TD) 2313, of March 21, 1916, states that Form 1040 is only to be used by ***FIDUCIARIES* of nonresident aliens** (**NOT** by the nonresident aliens themselves**,** back in Minnesota), to report and pay any tax on "income from property owned, and of every business, trade, or profession **carried on in the [District] United States**.…received by them **in behalf of** their nonresident alien principals." (See the complete document in the Appendix.) That is, it is to be used by the withholding agents to report the 'income' of the foreign (nonresident alien) principals—e.g., someone living and working in Arizona.

Back to Form 2555. For the last couple of years, a few hip 'taxpayers' have complied with the above requirement, and have received refunds of up to the statutory yearly deduction of $74,000, plus a generous housing allowance. Recently, however the IRS is usually stalling, claiming that the filing of a Form 2555 constitutes a 'frivolous return,' and imposing a $500 frivolous penalty charge—which is simple and certain to defeat, if one knows exactly how to proceed.

As a consequence, in 1995 they simply took mention of Form 2555 out of the cross tables! **It is still the 'law,'** you just can't see it, in recent yearly revisions! They say in response to queries, that its presence

was too confusing!! I call it ***really*** **confusing**, **not to tell the whole country what form to submit, in order to pay one's 'individual income tax'!**

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25. Duties of the Criminal Investigation Division (CID).

Perhaps this is a good place to quote the duties of the CID. In the Internal Revenue Manual, Chapter 1100, Section 1132.75 it states:

> The Criminal Investigative Division enforces the criminal statutes applicable to income, estate, gift, employment, and excise tax laws involving [District] United States citizens residing in foreign countries [like Missouri and New Hampshire] and nonresident aliens subject to Federal income tax filing requirements [e.g., Oregonians having federal U.S. source income].

In the many times that I have seen this mentioned, I have never witnessed it correctly interpreted. A typical retort is to ask where in the code or the IRM is there reference to Americans living and working in the U.S., as opposed to foreign countries. It you have read everything in this paper, you will instantly understand that the outlined duties are correctly defined and absolutely constitutional. As you know, if you file a Form 1040, you are swearing to being a District U.S. citizen, and since you live in a foreign country (Georgia), you are, therefore, their legitimate meat. Actually, this quote validates what I have been saying. It may, indeed, be an embarrassment to the IRS, but not for the reasons that other people believe. It is because it verifies the fact that **most taxpayers are foreigners to the District United States**. And, note, by the way, that the CID works out of the ***International*** Office, in Philadelphia…for, after all, it is concerned with collection from what we've seen private international law considers to be **50 foreign countries!**

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26. Implementing regulations.

Next, I want to show why understanding the vital role of regulations is crucial in determining to whom the codes apply…as a background to speaking briefly of the keystone Sections 61 and 63 of the IRC.

At 26 CFR 601.702(a)(1)(ii) **Effect of failure to publish,** it unambiguously states that:

> ….any such matter which imposes an obligation and which is not so published or incorporated by reference **will not adversely change or affect a person's rights**. (Emphasis added.)

One could also reference, among others, 25 CFR Part 601. But the strongest and most often quoted authority is at 44 USC 1505(a) and 1507, which are part of the Federal Register Act, where it clearly says that if something is required to be published in the FR, and it isn't, then **the individual involved**

cannot be adversely affected, and is held harmless. This has been upheld in several court cases.

E.g., I like the Renis, Murphy, and Mersky cases, and especially *U.S. v. $200,000.* But I will limit myself to a quote from what seems to be considered the controlling case in this matter. The Supreme Court stated in *California Banker's Association v. Schultz*, 416 U.S. 21, 26 (1974):

> Because it has a bearing on our treatment of some of the issues raised by the parties, **we think it important to note** [when have you seen that before?] that the Act's civil and criminal penalties **attach only upon violation of regulations** promulgated by the Secretary; if the Secretary **were to do nothing, the Act itself would impose no penalties on anyone.** (Emphasis added.)

IRC Sections 61 and 63 are two of the most important in the Code. In 26 USC 63(a), it defines "**taxable income**," for Subtitle A **Income taxes,** as meaning "gross income minus the deductions allowed…" This is purportedly clarified by Section 61, which reads:

> **Gross income defined**. **(a) General definition.** Except as otherwise provided in this subtitle, gross income means all income from whatever source derived…"

As the Supreme Court said in the California Banker's Assoc. case just above, I 'think it important to note' that these sections lack the required implementing regulations, as determined by referencing the Parallel Table of Statutory Authorities and Rules in the Index volume of the CFR. This stands to reason, of course, since, as has been shown, there have been, and can be, **no** constitutionally legitimate internal revenue districts established in the 50 states, pursuant to 26 USC 7621 and E.O. #10289, and, therefore, no such publication is necessary.

Since there are **NO** Part 1 (Income taxes) or Part 31 (Employment Tax) regulations for 26 USC 63 **Taxable income defined**, it is limited to determining 'taxable income' only for such as government employees (5 USC 301); those residing and working within the federal zone; nonresident aliens and foreign corporations (back in Wyoming) deriving gross income from within the District U.S.; and those under U.S. maritime jurisdiction.

Without any means to determine taxable income, which is the ultimate object of any tax collection activity, there is little point in pursuing any other matter! However, just for your general delectation, you might find it of interest that in 26 CFR 1.62-1, which defines '**adjusted gross income**,' we find that since subsections (a) and (b) are 'reserved,' one must rely on § 1.62-1T for **the only definition of 'gross income.'** And, since 'T' means temporary and **temporary regulations have no legal force and effect**, it is as if § 62 had been expunged from the code. Indeed, for all intents and purposes it has; it's just still printed there.

This procedure is far from unusual, since, for example, **every** penalty and enforcement section in Subtitle F **Procedure and Administration** (where is found the feared § 7203 **Willful failure to file return, supply information, or pay tax**) has either no implementing regulations at all or else has been taken over by the Bureau of Alcohol, Tobacco, and Firearms, Title 27—and, thus, has ***zero connection***

to Subtitle A **Income Taxes** or Subtitle C **Employment Tax**. Of course, people go to prison for not knowing and availing themselves of this knowledge. Cases where the would-be taxpayer is known to know this are apparently dismissed before they reach court. Speak of embarrassing!!

I enjoy researching such matters. But, I would like to remind you that the question of whether or not one has 'gross income' has pertinence ***only if*** **one is subject to and liable for** payment of 'income tax,' in the first place! **For what conceivable relevance could the precise definition of 'income' or 'gross income' have for someone not so subject and liable?!** Arguing that one has none of this ill-defined stuff called 'income' implies that if you did, then you believe that you would be subject to and liable for the payment of income tax.

Such a belief, which is shared by most taxpayers, stems from the assumption that earned property is the subject of income tax. Though both the House Congressional Record and the Supreme Court have decimated this position:

> The income tax is, therefore, not a tax on income as such. **It is an excise tax with respect to certain activities and privileges** which is **measured by reference to the income** which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax. House Congressional Record, 3-27-43, page 2580. (Emphasis added.)
>
> Excises are "taxes laid upon the manufacture, sale or consumption of commodities within a country, upon licenses to pursue certain occupations [like working for the federal government], and upon corporate privileges." Cooley, Const. Lim., 7th ed., 680. (*Flint v. Stone Tracy Co.*, 220 U.S. 107, at 151 (1911)). (Emphasis added.)

And, they go on to say, "the element of demand is lacking. If business is not done in the manner described in the statute, **no tax is payable**." (loc cit, at 151-152. Emphasis added.)

A recent email-list communication from Dave Champion makes an exceedingly interesting observation about the courts' approach to the idea of income tax being an excise tax. After reading a great number of tax cases, he found that:

> In every case in which the court rules that the tax is an excise, the court NEVER mentions citizenship and the defendant is always a Citizen of one of the states of the Union. However, in EVERY case where a federal court has ruled that the income tax is a direct tax without apportionment, the court ALWAYS adds,..."upon a citizen of the United States". ("'Excise' for 'Citizen of States of the Union', 'Direct Tax' for 'Citizen of the United States'?" 4/2/00.)

In other words, **direct taxation, which is unconstitutional sans apportionment, is only possible for federal citizen/subjects**. While the court only imposes a tax on state Citizens by treating it as a privilege or excise tax, and without calling the defendant a U.S. citizen. This makes perfect sense, and is in harmony with what I have been saying.

27 Status, 'person' and 'individual.'

A few words on claiming and establishing one's true '**status**'—which is defined as "[a] legal personal relationship, not temporary in its nature **nor terminable at the mere will of the parties**." (*Black's Law Dictionary*, 6th edition. Emphasis added.) State Citizenship is a status not created by either the corporate State or the common law state, but is a natural common law birthright.

The right to such a determination is also supported by an international treaty, to which the United States is a party:

International covenant on civil and political rights

> Article 1 All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (U.N.T.S. No. 14668, vol. 999, p. 171 (1976).)

To maintain one's status requires an ongoing effort. For it can all too easily be relinquished, as most have done. Ben Franklin said: "When men make sheep of themselves, the wolves will eat them."

For example, I would venture that in almost all states (I know of at least one exception—and it's not California), one cannot register as a 'qualified elector' (voter) without certifying, under penalty of perjury, that s/he is a federal citizen. Someone told me that they had tried to register, stipulating that they were a de jure state Citizen, and therefore, a Citizen of the United States of America—but not a citizen of the United States. He was not permitted to register. Although he pursued the matter to the Secretary of State, he received no explanation.

Far from being a birthright, everyone agrees that the 'U.S. citizen' was created by the 14th Article of Amendment.

> "The first clause of the fourteenth amendment of the federal Constitution…created two classes of citizens, one of the United States and the other of the state." *Cory v. Carter*, 48Ind. 427, 17 Am. Rep. 738.
>
> "No white person born within the limits of the United States and subject to their jurisdiction...or born without those limits, and subsequently naturalized under their laws, owes his status of citizenship to the recent amendments to the Federal Constitution. The purpose of the 14th Amendment...was to confer the status of citizenship upon a numerous class of persons domiciled within the limits of the United States who could not be brought within operation of the naturalization laws because native born, and whose birth, though native, at the same time left them without citizenship. Such persons were not white persons but in the main were of African blood, who had been held in slavery in this country..." *Van Valkenburg v. Brown* 43 Cal 43. 47 (1872) (Emphasis added. See other

quotes at the end of this paper.)

Originating from a corporation, called the United States, s/he is a fiction, just as is the U.S.—not a 'wo/man on the land.' S/he is an abstraction, defined into being at the changing whim of the United States Congress, of which s/he is a franchisee and subject. As such, s/he is assigned statutory 'privileges,' for s/he has no inherent, **u**nalienable 'rights.' S/he has a status comparable to a green card resident alien.

For example, it has been ruled more than once that the first 10 Articles of Amendment of the Constitution of the United States—the so-called Bill of Rights—do not apply to such 'persons.' (**They have their own**, found in Title 48 § 1421b "**Bill of rights!!"—**without the 10th Amendment of the Constitution of the U.S., together with many other changes. However**,** being in the code, and therefore statutory and alterable, I believe that it would be more correctly termed a 'Bill of Privileges.')

> The privileges and immunities clause of the 14th Amendment protects very few rights because it **neither** incorporates the Bill of Rights **nor** protects all rights of individual citizens. Instead, this provision protects **only** those rights **peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship**. *Jones v. Temmer* 829 F. Supp. 1226 (Emphasis added.)

The 14th Amendment starts off: "All persons…"—because that's who it addresses. A '**person**' is an artificial entity, **to which statutory law applies**…whether it be in the guise of a corporation or a human being. All the codes refer almost exclusively to '**persons.**' Only one time, in Title 26, for instance, is a legally necessary exception made…when having to do with inoculations, and the phrase "human being" is used.

It was mentioned above that the IRS records for all taxpayers are stored in 126 '**entity** modules.' You will find, in the lengthy definition of 'entity' in *Black's Law Dictionary* (6th edition), that there is no reference to, **nor any indication that this term could possibly apply to, a human being**. An entity is, in part:

> [a]n organization or being that **possesses separate existence for tax purposes**. Examples would be corporations, partnerships, estates and trusts. (Emphasis added.)

Indeed, there was a class action suit recently, in the D.C. District Court, by several hundred people, demanding to know why there are no Privacy Act tax 'records' relating to them, …which, of legal necessity, could only be personal records, i.e. of living human beings, not entity documents, as for a business. (For, without such records—and they never exist—then there is no legal justification even to be approached by the IRS.) The government tax attorneys admitted, in open court, that there **were no such records** for them. But the case was defeated on a technicality, because of a grossly incompetent attorney.

A fiction can only deal with a fiction. That is why the corporate government does everything it can to make you participate somehow in corporate activity. Thus, you become a 'person,' 'individual,' or 'resident.' In other words, a federal citizen. Only by treating you as a fictitious entity, can they attempt

to tax you. And, just for good measure, they impute to you drug dealing activities in the Virgin Islands, an excise taxable activity…which also makes you a 'person,' a juristic entity, which they can approach in court.

As was stated, federal and State statutes apply primarily to 'U.S. citizens.' Theoretically, at least, state Citizens need not submit to them, except where they have to do with one of the 17 "Powers vested by this Constitution in the Government of the United States…" (1:8:18).

For example, note the State of California CCP § 1898. **Public and private statutes defined** states that

> Statutes are public and private. A private statute is one which concerns **only designated individuals**, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting **corporations**. (Emphasis added. Notice how it always seems to come back to corporations.)

Interestingly and importantly, another restriction is that such fictional creations as 'U.S. citizens' cannot invoke the common law Constitution of the state wherein they reside—e.g., in California, the original one, of 1849, rather than the corporate statutory law substitute, of 1879, as amended—which has not 'replaced' it. For the 14th Amendment operates within admiralty jurisdiction, i.e., civil law, not common law.

For example, in California Republic the Constitution (1:11) provides state Citizens with a writ of habeas corpus. In 1872, however, it enacted in the Penal Code (Title 12, Chapter 12, Section 1473) a statutory writ of habeas corpus…for other 'persons,' who could not avail themselves of the former, because it operated under common law.

After the war between the states, every former Confederate state was required to rewrite its constitution, and others chose to, as well…like California, in order to comply with the Civil Rights Act of 1865 and the 14th Amendment of 1868. For at that time they were presented with the problem of legislating for two political classes of citizens. Previously, there were only de jure state Citizens, with unalienable rights. Now, they were required to accommodate the newly decreed federal subjects, the collectively-proclaimed citizens of the District Government, and make each of them a "citizen of the state in which he resides." The original constitutions were not sufficient, because they didn't address persons like this new class of citizen, who had only statutory rights (read privileges). These new constitutions were, in reality, merely 'statutory acts' with the appearance of being constitutions. Which is why it was not necessary that they be signed or have dates of enactment…as is the case with the recent Constitution of Missouri (1945).

The main thing to remember is that de jure U.S. citizens, as well as the 200 plus million self-proclaimed ones, owe their main allegiance to Uncle Sam. They are merely strangers, aliens, 'residing' in their chosen States. Since the time the federal government was infused with unconstitutional powers by Lincoln, the states have become ever weaker. They merely act as "baby sitters," as Dave Champion puts it, for these 14th Amendment statutory creatures.

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28. Conclusion and a note on the '861 argument.'

Having just completed the above paper, it occurred to me that it might be useful to summarize some of the main points covered, which go to prove that the usual interpretation of the Internal Revenue Code—both by the general public and probably a majority of researchers in the Patriot Movement—is not correct when it takes the term 'United States,' as used therein, to mean the whole nation, and the term 'U.S. citizen,' to refer to every American. Beliefs, as I have shown, which the government has done everything in its power to foster.

In my understanding, each of the twenty-one points, selected below, is prima facie evidence that the IRC does not refer to the 50 union states when employing the term 'United States'—unless specifically stating that it is **only doing so in that particular instance**.

I have tried to make them somewhat self-contained, in the event that they were to be read first. A fair rebuttal, however, would have be of the full exposition of each position, and not of the synopses below.

All emphasis is added, except of code section titles, etc.

1. The Alaska and Hawaii Omnibus Acts, mandates that the IRC stop referring to Alaska and Hawaii as being 'States,' upon their being made states of the union. Therefore, 26 CFR 31.3121(e)-1 **State, United States, and citizen** [revised April 1, 1999] now reads: "(a) When used in the regulations in this subpart, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Territories of Alaska and Hawaii **before their admission as States**…" They were previously, then, **federal States**, which is what the IRC said it applied to. *Quod erat demonstrandum.* (QED, 'which was to be demonstrated.')

2. The foregoing means that **the IRC admits that it no longer applies to these two states**—which, however, are constitutionally no different than the other 48 states. Therefore, **the IRC applies to none of the 50 states**. QED.

3. The findings of the Legislative Counsel and the Congressional Research Service, in reply to a request from Congresswoman Barbara Kennelly, state that: "The term state in 26 U.S. Code 3121 (e) specifically includes only the named territories and possessions of the District of Columbia, Puerto Rico, the Virgin Islands, Guam and American Samoa"—not the 50 states. QED.

4. Title 26 § 7621 **Internal revenue districts** reads: "(b) Boundaries.…[T]he President may subdivide any State or the District of Columbia, or unite into one district two or more States." This, of course, would be unconstitutional (4:3:1), if reference were being made to the 50 states. So, obviously, it is not. QED.

5. Note such instructions as this: "The term 'United States' means (but only for purposes of this subsection and subsection (a)) the fifty States and the District of Columbia." (Hawaii Omnibus Act, Section 29(d)(3).) Or this, from the Alaska Omnibus Act § 14(d)(2): "and by striking out 'continental United States' in clause (ii) of such sentence and inserting in lieu thereof 'United States (which for

purposes of this sentence and the next sentence means the fifty States and the district of Columbia)'." In the middle of a paragraph, then, we are told that the U.S. means the 50 States…**but, only for 2 sentences!** On other occasions it doesn't. QED.

6. The United States District Court case *Burnett v. Commissioner*, which held that Subtitle A taxes apply only to Washington, D.C. and the territories. They cited 26 USC 7701(a)(9), the IRC's general definition of 'United States,' and § 7701(a)(10), the definition of 'State,' interpreting them as in this paper. QED.

7. Only in the few instances that I mention in this paper is it stated that the term "'United States' means the 50 States…"—occasions which, unlike all others, clearly and obviously call for application to the whole nation. And, only on these occasions, incidentally, is the term 'means' used, rather than the term 'includes.'

8. The January 1, 1961, revision of Title 26 CFR 170.59 states: "'Includes' and 'including' shall not be deemed to exclude things other than those enumerated [i.e., by the example given…by the class example] **which are in the SAME GENERAL CLASS**." Or, as TD 3980 (1927) puts it: "**by introducing the specific elements constituting the enlargement**." With the above in mind, look at the IRC's general definition of 'State' at 26 USC 7701(a)(10): "The term 'State' shall be construed to include the District of Columbia…" Since the District of Columbia manifestly and incontestably can not be considered as being *pari causa* (on an equal footing and with equivalent rights) with the 50 states, it must, therefore, be a federal State. Being in a category separate from the union states, this definition, then, cannot be expanded to 'include' them. QED.

9. Therefore, when 26 USC 7701(a)(9) **United States** says that this term "includes only the States and the District of Columbia," the term 'States' must, perforce, mean the federal States. For, it cannot be making reference to the union states, as established, above. QED. (Most Americans would not guess that there are, or even could be, such things as federal States. But, *Black's Law Dictionary*, 6th edition, clears this up, in the article 'State.' It differentiates two kinds. First, it designates: "The section of territory occupied by one of the United States." But, also, it refers to federal States: "Any [S]tate of the [District] United States, [comma, that means, here, 'which is comprised of the following'] the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States [and, therefore, not a union state]. Uniform Probate Code, § 1-201(40)." (Emphasis added.) I deal with and document federal States not infrequently, in the instant paper.)

10. Title 28 § 1746, has two jurats: "(1) If executed without (outside) the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States **of America** that the foregoing is true and correct…'" and "(2) If executed **within** the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct…'" Note also that they left out 'United States' in the second oath, after including 'the United States of America' in the first one. Was this to avoid people questioning what the difference between them was? Nevertheless, the point remains that there is, here, a United States of America designated as being "**without (outside)**" the 'United States.' QED.

11. With three exceptions, noted in the paper, the use of 'several States' misleadingly implies that reference is being made to the union states. A perfect example of this is found in the Hawaii Omnibus Act: "Sec. 10. Section 2 of the Act of September 2, 1937 (50 Stat. 917), as amended, is further amended by striking out the words '; and the term "State" shall be construed to mean and include the **several States** and the Territory of Hawaii'." So, before Hawaii became a union state it was on a par with the 'several States'… meaning that they must have been federal States. For a Territory could never be termed a State, in the same sense as Nebraska. QED.

12. It is instructive to follow the transmogrification of the general definition of 'State,' presently found at 26 USC 7701(a)(10). (Please excuse the long word, but it seems to fit the bill like no other. *Webster's New Collegiate Dictionary* defines it as "to change or alter greatly and often with grotesque or humorous effect." You be the judge.) In 1873, its forerunner stated that it "shall be construed to include the Territories and the District of Columbia…" When Alaska was admitted to the union, in 1959, 7701 (a)(10) **State** was amended by striking out "Territories' and substituting "Territory of Hawaii," the only remaining incorporated Territory. A few months later, when Hawaii was admitted to statehood, this was amended by striking out "the Territory of Hawaii and." So now we simply have: "The term 'State' shall be construed to include the District of Columbia…" Patently, a federal State. QED. And, incidentally, this further substantiates and confirms the correct interpretation of the term 'includes,' for these cases it can be read in no other way than as being a term of restriction.

13. In section 7 of this paper I quote an alcohol and tobacco tax act, of 1868, which reads: "…and the word **'State' to mean and include a Territory and District of Columbia**." So, here we have the federal States referred to openly and unmistakably. Furthermore, '**mean' and 'include' are equated**, which **makes 'include' restrictive**. This is bolstered in 12 USC 202 **Definitions** where it says: "the term 'State' means any State, [comma, that means, here, 'which is comprised of the following'] Territory, or possession of [i.e., belonging to] the [District] United States…" 'State,' here, has to unquestionably indicate a federal State, because of the other sample examples, which are totally distinct from a union state and, therefore, cannot be in the same list with it. QED.

14. Title 28 § 5 **United States defined** reads: "The term 'United States,' as used in this title in a territorial sense, includes all places and waters, continental and insular, subject to the jurisdiction of the United States, except the Canal Zone." 'Jurisdiction,' here, is short for 'complete or exclusive jurisdiction,' as adequately documented in the instant paper. As it's stated in the McCuller case: "land acquired for the United States and under its **exclusive** jurisdiction." See point 19 for more documentation of the fact that legislative jurisdiction means **complete** jurisdiction. QED.

15. It is more than noteworthy that lacking any statutory or regulatory authority in the 50 states, the IRS, BATF, and other alphabet soup agencies, can be required by law to apply for permission to enter these states, as **registered foreign agents**, pursuant to the **Foreign Agents Registration Act of 1938**. For they are operating under international law, not under the general, plenary powers of 4:3:2 of the U. S. Constitution, as would be the case were they in the federal zone, but rather under the specifically authorized enumerated special powers of 1:8. Does this seem like something that could happen in a single income tax jurisdiction? And look at Wyoming Sheriff Dave Mattis, who established in court that he had the legal and constitutional right to retain IRS agents in custody for operating in his county

without his permission—and had done so. QED. (See section 11 for details.)

16. The Alaska Omnibus Act § 22 makes a very significant statement in subsection (b): "Section 4262(c)(1) of the Internal Revenue Code of 1954 (definition of 'continental United States') is amended to read as follows: '(1) The continental United States.—The term "continental United States" means the District of Columbia and the States other than Alaska.'" So, now that Alaska has become a union state it is no longer included in the definition of the "continental United States"—though, by implication, the islands of Hawaii still are. Code definitions, as you know, can mean anything. QED.

17. Somewhat similarly, the Hawaii Omnibus Act § 45, calls for "striking out the words 'for the purchase within the continental limits of the United States of any typewriting machines' and inserting in lieu thereof 'for the purchase within the States of the Union and the District of Columbia of any typewriting machines'." For, such machines were bought from both of these new union states, when they were Territories, and, therefore, part of the 'continental United States.' Now, as union states they are no longer part of the territorial District United States. QED.

18. I quote the Supreme Court (*Elk v. Wilkins*), to the effect that: "the phrase 'subject to the jurisdiction' relates to time of birth, and one not owing allegiance at birth **cannot become a Citizen** save by subsequent naturalization….[i.e.] **COMPLETELY** subject to the political jurisdiction." Not having gone through the 5 year court process to do this, any state Citizen is able to avail him/herself of Form W-8 **Certificate of Foreign Status**, which s/he gives to her/his employer—the IRS never wants to sees it. The General Instructions read: "Use Form W-8 or a substitute form [i.e., a letter] containing a substantially similar statement to tell the payer…that you are a nonresident alien individual, foreign entity, or exempt foreign person not subject to certain U.S. information return reporting or backup withholding rules...For purposes of this form, you are an "exempt foreign person" for a calendar year in which: 1. You are a nonresident alien individual…" Notice that the term 'payer' is used, not 'employer,' which is a 'painted word' in tax law, and would not fit in this picture. So, where is the universally applicable income tax for all of America and all its inhabitants? If there were only one United States that the IRC applied to, how can one utilize a Form W-8 to claim that s/he is an NRA, by virtue of working and living in a union state? QED.

19. In 1957 the second volume of an extremely important study, was published by the federal government: **Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas with States. A text of the Law of Legislation Jurisdiction.** It established, in painstaking detail, that only persons residing within the legislative jurisdiction of the U.S. Congress are 'residents' of that jurisdiction—i.e., are '**U.S. residents**.' It is made exhaustively manifest that this Congress does not extend the jurisdiction of its legislative umbrella beyond the Constitutionally restricted boundaries of territories of the United States, "belonging to" its "exclusive sovereignty" "in all cases whatsoever," e.g., the federal zone (D.C., the federal States, possessions, and enclaves). In other words, the powers of the federal government are limited to and specifically defined at 1:8:17 of the Constitution. And, just as a reminder: "'Act of Congress' includes [is restricted to] an act of Congress **locally applicable** to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession." (Rule 54(c), **Federal Rules of Criminal Procedure**.' This takes care of the question as to whether one is a 'U.S. resident' or not…just as the preceding paragraph goes a long way in clarifying who is a 'U.S. citizen.' QED.

20. In the **Internal Revenue Manual**, Chapter 1100, Section 1132.75, it states: "The Criminal Investigative Division enforces the criminal statutes applicable to income, estate, gift, employment, and excise tax laws involving [District] United States citizens residing in foreign countries [like Missouri and New Hampshire] and nonresident aliens subject to Federal income tax filing requirements [e.g., Oregonians having federal U.S. source income, say, from Treasury Bonds]. If my bracketed suggestions are not on the mark, then the CID would be acting outside its delegated authority, defined above, and only above, in proceeding as it does. In other words, one could then ask where there is reference to Americans living and working in the USA. The 'U.S. citizen' part is explained by everyone's swearing on a Form 1040 that s/he is 'U.S. citizen,' for tax purposes. And, I have established that from the point of view of private international law the union states are 50 countries foreign to one another, as well as to their agency, the District United States. QED.

21. Lastly, the supremely important Brushaber case and the resultant Treasury Decision 2313, of 1916. This can be summarized briefly, without distorting the situation. Frank Brushaber thought that he was outside the tax *forum contractus* of the federal government, due to his living and working in New York —meaning that he was not a resident in, or of, the U.S., and was alien to its jurisdiction, i.e., **a nonresident alien, which this the Court never contested**. His error was in believing that the Union Pacific RR Co. was also outside this tax forum. Consequently, in the first sentence he "enjoined the corporation from complying with the income tax provisions of the tariff act of October 3, 1913…" He contended that the Union Pacific was incorporated in a union state. But he overlooked the fact that Utah was still a federal territory in 1862 and, therefore, domestic to the District U.S. Therefore, he was obligated to pay an excise tax (which, incidentally, is what the Brushaber case determined that income tax was) for the privilege of earning money from a corporation resident in the federal zone—i.e., having been incorporated by an act of Congress. It is exceedingly important to note that ***no money he earned in his home state was exacted, or even mentioned***. What this all means is that **a state Citizen, who, therefore, is a nonresident alien with respect to the District U.S., has no tax liability if he has no income that is "received from sources within the [District] United States."** (26 USC 871(a)(1))… which includes, thereby, being a federal employee. But the real jewel of this whole scenario is Treasury Document 2313, which I have reproduced in the Appendix. It states that it was promulgated specifically to implement the Brushaber case. In crystal clear language, it proceeds along in perfect harmony with the IRC today, as seen in § 872 **Gross Income**: "In the case of a nonresident alien individual…gross income includes only (1) gross income which is derived from sources within the [District] United States… And, of course "[a]n individual is a nonresident alien if such individual is neither a citizen of the

[District] United States nor a resident of the [District] United States." (26 USC 7701(b)(1)(B). Because this TD is referencing the Brushaber case exclusively, it can not be disputed, by any logical acrobatics, that Brushaber's status—i.e., living and working in a union state—was accepted by the Court as exemplifying the criteria that define a nonresident alien. **Which status is exactly like that of most Americans today**. Otherwise, why was he only obligated to pay income tax on the dividend earnings from a District U.S. corporation, **and not on any earnings from his home state, New York**. Therefore, when § 872, above, says "from sources within the United States" it can only be interpreted to mean 'within the District U.S.' QED.

* * *

Perhaps a fitting endnote to this paper would be a brief mention of a strategy that has recently been used with success, often called the Bosset Procedure. Thurston Bell, who is primarily responsible for its current promotion, although it has been around for awhile, prefers to term it the Employer Refund and Abatement Program. You can read about it on the website Taxgate.com, which he co-founded, or on his new website, NITE.org.

To be scathingly brief, it contends that 'gross income' derives **only** from sources listed at 26 CFR 1.861-8(f)(1), in 16 functional 'Operative sections.' These take up but a small page and a half, and clearly make reference to only two categories of income. All but one section specifies various sources of **foreign income**, such as (v) "*Foreign base company income*." The second category pertains to **foreigners**. It is (iv) "*Effectively connected taxable income*," which reads, in pertinent part:

> "Nonresident alien individuals and foreign corporations engaged in trade or business within the United States, under sections 871(b)(1) and 882(a)(1), on taxable income which is effectively connected with the conduct of a trade or business within the United States." (Emphasis added.)

Bosset, and other employers have received back monies they withheld, with interest, by claiming that they previously misunderstood the tax regulations. They say that now they realize that, pursuant to the CFR, **since their employees don't earn 'foreign income,'** they have no legal right to withhold anything.

The government cannot, of course, clarify that 'foreign' means any place outside the District U.S.—usually the 50 states. And, that the 'foreigners' specified, i.e. the nonresident aliens, are your average Americans working and living in one of the 50 states—as well as, of course, the other kind of nonresident alien, like a Canadian living in Canada and earning income in America

You must keep in mind that those using this '861 argument' are claiming to be 'U.S. citizens,' as the term is used in Title 26. The fact that the term is misunderstood to indicate all Americans, ironically doesn't hurt their case…because the IRS cannot admit otherwise. And, therefore, the government is left with the redoubtable task of explaining away the 'foreign income' bugbear. In other words, either the IRS admits what 'foreign' really signifies, or 'U.S. citizens' (as it is implying includes everyone) don't owe any income tax, if all their income was earned, say, in Missouri, and not in Germany.

So, then, if someone working for Ford Motor Co., in Kansas City, insists on calling him/herself a 'U.S. citizen,' for tax purposes, then pursuant to this 861 argument they would have no income tax liability. And it also so happens, that they would have no income tax liability if they were to realize that they were nonresident alien/Americans, since they are making no income in the District U.S. or working for the government. Both positions, of course, the IRS will resist. But, if the 861 argument proves legally unassailable—which I believe it will—it would be theoretically unavoidable that one of the two be allowed. Now, in July, 00, the IRS is starting to impose frivolous penalty charges for employees utilizing this approach. But the story is far from over. There has not been time for the mandatory due process hearings, where the IRS will really be put to the test—having to prove their case.

QUOTATIONS: The following are some highly relevant quotations.

- "**One may be a Citizen of a state, and yet not a citizen of the United States**." *Boyd v. State of Nebraska*, 143 U.S. 103, 108. And with almost identical wording: *Thomasson v. State*, 15 Ind. 449; and dozens of others. (Emphasis added.)
- "[W]e find nothing…which requires that a citizen of a state must also be a citizen of the United States, if no question of federal rights or jurisdiction is involved." *Crosse v. Bd. of Supvrs of Elections*, 221 A.2d. 431 (1966) (Emphasis added.)
- "By metaphysical refinement, in examining our form of government, it might be correctly said that there is no such thing as a citizen of the United States. But constant usage—arising from convenience, and perhaps necessity, and dating from the formation of the Confederacy—has given substantial existence to the idea which the term conveys. A citizen of any one of the States of the Union, is held to be, and called a citizen of the United States, although technically and abstractly there is no such thing [in 1855, before the 14th Amendment created them, in 1868]…. To conceive a citizen of the United States who is not a citizen of some one of the states, is totally foreign to the idea, and inconsistent with the proper construction and common understanding of the expression as used in the constitution, which must be deduced from its various other provisions. The object then to be obtained, by the exercise of the power of naturalization, was to make citizens of the respective states. If we examine the language closely, and according to the rules of rigid construction always applicable to delegated powers, we will find that the power to naturalize in fact is not given to Congress, but simply the power to establish an uniform rule…. [A] distinction both in name and privileges is made to exist between citizens of the United States *ex vi termini* [by the very meaning of the term used. Reference is being made to those living in the District of Columbia.], and citizens of the respective States. To the former no privileges or immunities are granted…" Ex parte Knowles, 5 Ca. 300 (1855). (Emphasis added.)
- "The 14th Amendment creates and defines citizenship of the United States. It had long been contended, and had been held by many learned authorities, and had never been judicially decided to the contrary, that there was no such thing as a citizen of the United States, except by first becoming a citizen of some state." *United States v. Anthony* (1874), 24 Fed. Cas. 829 (No. 14,459), 830. (Emphasis added.)
- "**United States citizenship does not entitle citizen to rights and privileges of state citizenship**." *K. Tashiro v. Jordan*, 201 Cal. 236, 256 P. 545 (1927), 48 Supreme Court. 527. (Emphasis added.)
- "It will be admitted on all hands that with the exception of the powers granted to the states and the federal government, through the Constitutions, the people of the several states are unconditionally sovereign within their respective states." *Ohio L. Ins. & T. Co. v. Debolt*, 16 How. 416, 14 L. Ed. 997.
- "At the Revolution, the sovereignty devolved on the people [state Citizens] and they are truly the sovereigns of the country." *Chisholm v. Georgia*, 2 Dall. 440, 463.
- "The people of the state [state Citizens], as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the king by his own prerogative." *Lansing v. Smaith*, 4

Wendell 9 (NY) (1829).

- The opinion of Judge John Appleton, of the Maine Supreme Court, cannot be stressed too strongly, when he stated that in the Dred Scott Decision, "Justice Taney says 'every person… recognized as citizens of the several states, became also citizens of this new political body'… Taney's opinion, therefore, rests upon a remarkable and most unfortunate misapprehension of facts. Taney would have concurred with (Justice) Curtis had the facts…been pointed out to him." (Emphasis added.)
- "A fundamental right inherent in "state citizenship" is a privilege or immunity of that citizenship only. Privileges and immunities of "citizens of the United States," on the other hand, are only such as arise out of the nature and essential character of the national government, or as specifically granted or secured to all citizens or persons by the Constitution of the United States." *Twining v. New Jersey*, 211 U.S. 78. (Emphasis added.)
- "We have cited these cases for the purpose of showing that the privileges and immunities of citizens of the United States do not necessarily include all the rights and powers of the Federal government. They were decided subsequently to the adoption of the Fourteenth Amendment…" *Maxwell v. Dow*, 176 U.S. 598 (1900).
- "[T]he 14th Amendment is throughout affirmative and declaratory, intended to ally doubts and to settle controversies which had arisen, and not to impose any new restriction upon [state] citizenship." *U.S. v. Wong Kim Ark* 169 US 649. (Emphasis added.)
- "A citizen of the United States is ipso facto and at the same time a citizen of the state in which he resides. While **the 14th Amendment does not create a national citizenship**, it has the effect of making that citizenship 'paramount and dominant' instead of 'derivative and dependent' upon state citizenship." *Colgate v. Harvey*, 296 U. S. 404, 427. (Emphasis added. More is the pity.)
- "The (14th) amendment referred to slavery. Consequently, the only persons embraced by its provisions, and for which Congress was authorized to legislate in the manner were those then in slavery." *Bowlin v. Commonwealth* (1867), 65 Kent. Rep. 5, 29. (Emphasis added.)
- "Our Union in its foreign relations presents itself with all its states and territories as one and indivisible; a garment without a seam; but at home we are separate sovereign states of the union. Within the limits of the states, the government of the United States has no powers but those that have been delegated to it." George Bancroft. (Emphasis added.)
- After the adoption of the 13th Amendment a bill which became the first Civil Rights Act was introduced in the 39th Congress, the major purpose of which was to secure to the recently freed Negroes all the civil rights secured to white people…No one but citizens of the United States [i. e., the freed slaves] were within the provisions of the Act. Cf. *Hague v. C. I. O.*, 307 U. S. 496, 509. (Emphasis added.)
- 26 CFR 1.911-2(h) Foreign Country "The term 'foreign country' when used in a geographical sense includes any territory under the sovereignty of a government other than that of the [federal] United States [such as Kentucky]."
- "Foreigner. …a person who is not a citizen or subject of the state or country of which mention is made…" *Black's Law Dictionary*, 6th edition.
- "The 14th Amendment, declaring that all persons born or naturalized in the [District] United States and subject to its allegiance are citizens, uses the word in the sense of [federal] 'national' or 'subject.'" *Encyclopedia of Political Science*, art. "Nationality." (Emphasis added.)
- "The natives of Puerto Rico and the other ceded islands are [federal] United States nationals, or,

as the learned Attorney General prefers to term them, American subjects." *United States v. Wong Kim Ark*, 169 U.S. 667. (Emphasis added.)

- "In determining the boundaries of apparently conflicting powers between the states and the general government, the proper question is, not so much what has been, in terms, reserved to the states, as what has been, expressly or by necessary implication, granted by the people to the national government; for each state possesses all the powers of an independent and sovereign nation, except so far as they have been ceded away by the constitution. **The federal government is but the creature of the people of the states, and, like an agent appointed for definite and specific purposes, must show an express or necessarily implied authority in the charter of its appointment to give validity to its acts**." *People ex rel. Attry. Gen. v. Naglee*, 1 Cal. 234 (California Supreme Court, 1850). (Emphasis added.)
- "It scarcely needs to be said [sic!] that unless there has been a transfer of jurisdiction [from state to federal]…the federal Government possesses no legislative jurisdiction over any area within a [s]tate…" "Jurisdiction Over Areas Within the States" A federal government report of 1956. (Emphasis added.)
- "…McCULLER, at a place within the special maritime and territorial jurisdiction of the United States, namely Wright Patterson Air Force Base, Ohio, on land acquired for the United States and under its exclusive jurisdiction, did take…" (Emphasis added.) *United States of America v. ERNEST A. McCULLER*, Case No. CR 3-95-73, U.S. District Court for the Southern District of Ohio, Western Division, charges filed August 10, 1995.
- "The Doctrine of Sovereign Immunity is one of the Common-Law immunities and defenses that are available to the Sovereign Citizen of Michigan [or, say, California]." *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 105 L. Ed. 2d. 45, 109 S. Ct. 2304 (1988).
- "Congress exercises its confirmed powers subject to the limitations contained in the Constitution. If a state ratifies or gives consent to any authority which is not specifically granted by the Constitution of the United States, it is null and void. State officials cannot consent to the enlargement of powers of Congress beyond those enumerated in the Constitution." Sandra Day O'Connor, *New York v. United States, et al.*, 488 U.S. 1041
- "The more intelligent adversaries of the new Constitution admit the force of this reasoning; but they qualify their admission by a distinction between what they call internal and external taxation. *The former they would reserve to the State governments*; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal head." Alexander Hamilton, *The Federalist* 36. (Emphasis added.)
- "A person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, if this birth occurs in a territory over which the United States is sovereign." 3A Am Jur 1420, art. Aliens and Citizens.
- "The law is that income from sources not effectively connected with the conduct of a trade or business within the U.S. Government (sic) is not subject to any tax under subtitle "A" of the Internal Revenue Code." Letter in response to a Privacy Act request dated 12/12/95, by Cynthia J. Hills, Disclosure Officer, IRS, Service Center, Philadelphia, PA. (Emphasis added.)
- In the 1920s, Pulitzer Prize winner for his writings on American Law, Charles Warren, said that "[h]ad the [Slaughterhouse cases] been decided otherwise the States would have largely lost their autonomy and become, as political entities, only of historic interest…The boundary lines between the States and the National Government wound be practically abolished, and the rights of the citizens of each state would be irrevocably fixed as of the date of the Fourteenth

Amendment." It was "one of the landmarks of American law." But, this has come to pass, and almost everyone claims to be a federal District citizen—swearing to it on every 1040 Form.

- Before the 14th Amendment, in 1868, "it had been said by eminent judges that no man was a citizen of the United States except as he was a citizen of one of the States composing the Union. Those, therefore, who were born and always resided in the District of Columbia or in the Territories, though within the United States, were not citizens…[After that]…the distinction between citizenship of the United States and citizenship of a state is clearly recognized. Not only may a man be a citizen of the United States without being a citizen of a state [e.g., if born in D. C.], but an important element is necessary to make the former the latter. He must reside in the state to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to become a citizen of the Union. *Slaughter House Cases*, 16 Wall. 36, 72, 74 (1873).

APPENDIX: Treasury Decision 2313.

Treasury Decision Under Internal Revenue Laws of the United States

Vol. 18 January-December 1916

W. G. McAdoo
Secretary of the Treasury

Washington Government Printing Office 1917

T.D. 2313 Income Tax

Taxability of interest from bonds and dividends on stock of domestic corporations owned by nonresident aliens, and the liabilities of nonresident aliens under section 2 of the act of October 3, 1913.

Treasury Department
Office of Commissioner of Internal Revenue
Washington, D.C., March 21, 1916

To collectors of internal revenue:

Under the decision of the Supreme Court of the United States in the case of Brushaber v. Union Pacific Railway [*sic*] Co., decided January 24, 1916, it is hereby held that income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3,

1913.

Nonresident aliens are not entitled to the specific exemption designated in paragraph C of the income-tax law, but are liable for the normal and additional tax upon the entire net income "from all property owned, and of every business, trade, or profession carried on in the United States," computed upon the basis prescribed in the law.

The responsible heads, agents, or representatives of nonresident aliens, who are in charge of the property owned or business carried on within the United States, shall make a full and complete return of the income therefrom on Form 1040, revised, and shall pay any and all tax, normal and additional, assessed upon the income received by them in behalf of their nonresident alien principals.

The person, firm, company, copartnership, corporation, joint-stock company, or association, and insurance company in the United States, citizen or resident alien, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodic gains, profits, and income of whatever kind, to a nonresident alien, under any contract or otherwise, which payment shall represent income of a nonresident alien from the exercise of any trade or profession within the United States, shall deduct and withhold from such annual or periodic gains, profits, and income, regardless of amount, and pay to the officer of the United States Government authorized to receive the same such sum as will be sufficient to pay the normal tax of 1 per cent imposed by law, and shall make an annual return on Form 1042.

The normal tax shall be withheld at the source from income accrued to nonresident aliens from corporate obligations and shall be returned and paid to the Government by debtor corporations and withholding agents as in the case of citizens and resident aliens, but without benefit of the specific exemption designated in paragraph C of the law.

Form 1008, revised, claiming the benefit of such deductions as may be applicable to income arising within the United States and for refund of excess tax withheld, as provided by paragraphs B and P of the income-tax law, may be filed by nonresident aliens, their agents or representatives, with the debtor corporation, withholding agent, or collector of internal revenue for the district in which the withholding return is required to be made.

That part of paragraph E of the law which provides that "if such person…is absent from the United States…the return and application may be made for him or her by the person required to withhold and pay the tax…" is held to be applicable to the return and application on Form 1008, revised, of nonresident aliens.

A fiduciary acting in the capacity of trustee, executor, or administrator, when there is only one beneficiary and that beneficiary a nonresident alien, shall render a return on Form 1040, revised; but when there are two or more beneficiaries, one or all of whom are nonresident aliens, the fiduciary shall render a return on Form 1041, revised, and a personal return on Form 1040, revised, for each nonresident alien beneficiary.

The liability, under the provisions of the law, to render personal returns, on or before March 1 next succeeding the tax year, of annual net income accrued to them from sources within the United States during the preceding calendar year, attaches to nonresident aliens as in the case of returns required from citizens and resident aliens. Therefore, a return on Form 1040, revised, is required except in cases where the total tax liability has been or is to be satisfied at the source by withholding or has been or is to be satisfied by personal return on Form 1040, revised, rendered in their behalf. Returns shall be rendered to the collector of internal revenue for the district in which a nonresident alien carries on his principal business within the United States or, in the absence of a principal business within the United States and in all cases of doubt, the collector of internal revenue at Baltimore, Md., in whose district Washington is situated.

Nonresident aliens are held to be subject to the liabilities and requirements of all administrative, special, and general provisions of law in relation to the assessment, remission, collection, and refund of the income tax imposed by the act of October 3, 1913, and collectors of internal revenue will make collection of the tax by distraint, garnishment, execution, or other appropriate process provided by law.

So much of T.D. 1976 as relates to ownership certificate 1004, T.D. 1977 (certificate Form 1060), 1988 (certificate Form 1060), T.D. 2017 (nontaxability of interest from bonds and dividends on stock), T.D. 2030 (certificate Form 1071), T.D. 2162
(nontaxability of interest from bonds and dividends on stock) and all rulings heretofore made which are in conflict herewith are hereby superseded and repealed.

This decision will be held effective as of January 1, 1916.

W. H. Osborn
Commissioner of Internal Revenue

Approved, March 30, 1916:

Byron R. Newton,

Acting Secretary of the Treasury

Alan Freeman, July 25, 2000

CITES BY TOPIC: taxpayer

26 U.S.C. Sec. 7701(a)14:

Taxpayer

The term "taxpayer" means any person subject to any internal revenue tax.

Your Rights as a Nontaxpayer-IRS pamphlet (OFFSITE LINK)

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26 U.S.C. §1313: Definitions

(b) Taxpayer

Notwithstanding section 7701(a)(14), the term "taxpayer" means any person subject to a tax under the applicable revenue law.

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26 U.S.C. 6651 Notes:

"(a) Prohibition. - The officers and employees of the Internal Revenue Service - "(1) shall not designate taxpayers as illegal tax protesters (or any similar designation); and "(2) in the case of any such designation made on or before the date of the enactment of this Act (July 22, 1998) - "(A) shall remove such designation from the individual master file; and "(B) shall disregard any such designation not located in the individual master file. "(b) Designation of Nonfilers Allowed. - An officer or employee of the Internal Revenue Service may designate any appropriate taxpayer as a nonfiler, but shall remove such designation once the taxpayer has filed income tax returns for 2 consecutive taxable years and paid all taxes shown on such returns. "(c) Effective Date. - The provisions of this section shall take effect on the date of the enactment of this Act (July 22, 1998), except that the removal of any designation under subsection (a)(2)(A) shall not be required to begin before January 1, 1999.'

Long v. Rasmussen, 281 F. 236 (1922)

"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws..." [Long v. Rasmussen, 281 F. 236 (1922)]

Botta v. Scanlon, 288 F.2d. 504, 508 (1961)

"A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the states as a person liable for the tax without an opportunity for judicial review of this status before the appellation of 'taxpayer' is bestowed upon them and their property is seized..." [Botta v. Scanlon, 288 F.2d. 504, 508 (1961)]

Economy Plumbing & Heating v. U.S., 470 F2d. 585 (1972)

"Revenue Laws relate to taxpayers [officers, employees, and elected officials of the Federal Government] and not to non-taxpayers [American Citizens/American Nationals not subject to the exclusive jurisdiction of the Federal Government]. The latter are without their scope. No procedures are prescribed for non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course of law. With them[non-taxpayers] Congress does not assume to deal and they are neither of the subject nor of the object of federal revenue laws." [Economy Plumbing & Heating v. U.S., 470 F2d. 585 (1972)]

"Taxpayer" v. "Nontaxpayer": Which One are You?

Great IRS Hoax, section 5.3.1: "Taxpayer" v. "Nontaxpayer"

C.I.R. v. Trustees of L. Inv. Ass'n, 100 F.2d 18 (1939):

"And by statutory definition, 'taxpayer' includes any person, trust or estate subject to a tax imposed by the revenue act. ... Since the statutory definition of 'taxpayer' is exclusive, the federal courts do not have the power to create nonstatutory taxpayers for the purpose of applying the provisions of the Revenue Acts..."

Rowen v. U.S., 05-3766MMC. (N.D.Cal. 11/02/2005)

Specifically, Rowen seeks a declaratory judgment against the United States of America with respect to "whether or not the plaintiff is a taxpayer pursuant to, and/or under 26 U.S.C. § 7701(a)(14)." (See Compl. at 2.) **This Court lacks jurisdiction to issue a declaratory judgment "with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986," a code section that is not at issue in the instant action. See 28 U.S. C. § 2201; see also Hughes v. United States, 953 F.2d 531, 536-537 (9th Cir. 1991)** (affirming dismissal of claim for declaratory relief under § 2201 where claim concerned question of tax liability). Accordingly, defendant's motion to dismiss is hereby GRANTED, and the instant action is hereby DISMISSED.

 | *Last revision: July 16, 2006 11:16 AM*

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THE GREAT IRS HOAX: WHY WE DON'T OWE INCOME TAX

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Welcome to our free download page. The *Great IRS Hoax: Why We Don't Owe Income Tax* is a an ***amazing*** documentary that exposes the lie that the IRS and our tyrannical government "servants" have foisted upon us all these years:

> *"That we are liable for IRC Subtitle A income tax as American Nationals living in the 50 states of the Union with earnings from within the 50 states of the Union that does not originate from the government."*

Through a detailed and very thorough analysis of both enacted law and IRS behavior unrefuted by any of the 100,000 people who have downloaded the book, including present and former (after they learn the truth!) employees of the Treasury and IRS, it reveals why Subtitle A of the Internal Revenue Code is private law/special law that one only becomes subject to by engaging in an excise taxable activity such as a "trade or business", which is a type of federal employment and agency that puts people under federal jurisdiction who would not otherwise be subject. It proves using the government's own laws and publications and court rulings that for everyone in states of the Union who has not availed themselves of this excise taxable privilege of federal employment/agency, Subtitle A of the I.R.C. is not "law" and does not require the average American domiciled in states of the Union to pay a "tax" to the federal government. The book also explains how Social Security is the de facto mechanism by which "taxpayers" are recruited, and that the program is illegally administered in order to illegally expand federal jurisdiction into the states using private law. This book does not challenge or criticize the constitutionality of any part of the Internal Revenue Code nor any state revenue code, but simply proves that these codes are being misrepresented and illegally enforced by the IRS and state revenue agencies against persons who are not their proper subject. This book might just as well be called *The Emperor Who Had No Clothes* because of the massive and blatant fraud that it exposes on the part of our public servants.

"But dad, the emperor is naked!"

Three years of continuous research by the webmaster went into writing this very significant and incredible book. This book is *very different* from most other tax books because:

1. The book is written in part by our tens of thousands of readers and growing...***THAT'S YOU***! We invite and frequently receive good new ideas and materials from legal researchers and ordinary people like YOU, and when we get them, we add them to the book after we research and verify them for ourselves to ensure their accuracy. Please keep your excellent ideas coming, because this is a team effort, guys!
2. *We use words right out of the government's own mouth, in most cases, as evidence of most assertions we make*. If the government calls the research and processes found in this book frivolous, they would have to call the Supreme Court, the Statutes at Large, the Treasury Regulations (26 C.F.R.) and the U.S. Code frivolous, because everything derives from these sources.
3. We have invited, and even *begged*, the government repeatedly, both on our website and in our book and in correspondence with the IRS and the Senate Finance Committee (click here to read our letter to Senator Grassley under "Political Activism"), and in the We The People Truth in Taxation Hearings to provide a signed affidavit on IRS stationary along with supporting evidence that disproves *anything* in this book since the first version was published back in Nov. 2000. We have even promised to post the government's rebuttal on our web site *unedited* because we are more interested in the truth than in our own agenda. Yet, our criminal government has consistently and steadfastly refused their legal duty under the First Amendment Petition Clause to answer our concerns and questions, thereby hiding from the truth and obstructing justice in violation of 18 U.S.C. Chapter 73. By their failure to answer they have defaulted and admitted to the complete truthfulness of this book. Silence constitutes acquiescence and agreement in the legal field.

   > *"Evidence of failure to deny statements of others is admissible only when no other explanation is equally consistent with silence." U.S. v. Gross, 276 F.2d 816 (1960).*

   If the "court of public opinion" really were a court, and if the public really were *fully educated* about the law as it is the purpose of this book to bring about, the IRS and our federal government would have been convicted long ago of the following crimes by their own treasonous words and actions thoroughly documented in this book (click here for more details):

   - Establishment of the U.S. government as a "religion" in violation of First Amendment (see section 4.3.2 of this book)
   - Obstruction of justice under 18 U.S.C. Chapter 73
   - Conspiracy against rights under 18 U.S.C. 241
   - Extortion under 18 U.S.C. 872 .
   - Wrongful actions of Revenue Officers under 26 U.S.C. 7214
   - Engaging in monetary transactions derived from unlawful activity under 18 U.S.C. 1957
   - Mailing threatening communications under 18 U.S.C. 876
   - False writings and fraud under 18 U.S.C. 1018
   - Taking of property without due process of law under 26 CFR 601.106(f)(1)
   - Fraud under 18 U.S.C. 1341
   - Continuing financial crimes enterprise (RICO) under 18 U.S.C. 225
   - Conflict of interest of federal judges under 28 U.S.C. 455
   - Treason under Article III, Section 3, Clause 1 of the U.S. Constitution
   - Breach of fiduciary duty in violation of 26 CFR 2635.101, Executive order order 12731, and Public Law 96-303
   - Peonage and obstructing enforcement under 18 U.S.C. 1581 and 42 U.S.C. 1994
   - Bank robbery under 18 U.S.C. §2113 (in the case of fraudulent notice of levies)

4. We keep the level of the writing to where a person of average intelligence and no legal background can understand and substantiate the claims we are making for himself.
5. We show you how and where to go to substantiate every claim we make and we encourage you to check the facts for yourself so you will believe what we say is absolutely accurate and truthful.

6. All inferences made are backed up by extensive legal research and justification, and therefore tend to be more convincing and authoritative and understandable than most other tax books. We assume up front that you will question *absolutely every assertion* that we make because we encourage you to do exactly that, so we try to defend every assertion in advance by answering the most important questions that we think will come up. We try to reach *no* unsubstantiated conclusions whatsoever and we avoid the use of personal opinions or anecdotes or misleading IRS publications. Instead, we always try to back up our conclusions with evidence or an authoritative government source such as a court cite or a regulation or statute or quotes from the authors of the law themselves, and we verify every cite so we don't destroy our credibility with irrelevant or erroneous data or conclusions. Frequent corrections and feedback from our 100,000 readers (and growing) also helps considerably to ensure continual improvements in the accuracy and authority and credibility of the document.
7. Absolutely everything in the book is consistent with itself and we try very hard not to put the reader into a state of "cognitive dissonance", which is a favorite obfuscation technique of our criminal government and legal profession. No part of this book conflicts with any other part and there is complete "cognitive unity". Every point made supports and enhances every other point. If the book is truthful, then this must be the case. A true statement cannot conflict with itself or it simply can't be truthful.
8. With every point we make, we try to answer the question of "why" things are the way they are so you can understand our reasoning. We don't flood you with a bunch of rote facts to memorize without explaining why they are important and how they fit in the big picture so you can decide for yourself whether you think it is worth your time to learn them. That way you can learn to think strategically, like most lawyers do.
9. We practice exactly what we preach and what we put in the book is based on lessons learned actually doing what is described. That way you will believe what we say and see by our example that we are very sincere about everything that we are telling you. Since we aren't trying to sell you anything, then there *can't* be any other agenda than to help you learn the truth and achieve personal freedom.
10. The entire book, we believe, completely, truthfully, and convincingly answers the following very important question:

    "How can we interpret and explain federal tax law in a way that makes it completely legal and Constitutional, both from the standpoint of current law and from a historical perspective?"

If you don't have a lot of time to read EVERYTHING, we recommend reading at least the following chapters in the order listed: 1, 4, 5, 8 (these are mandatory).

TESTIMONIALS: Click here to hear what people are saying about this book!

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DOWNLOAD
THE GREAT IRS HOAX:
WHY WE DON'T OWE INCOME TAX
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- **Click here for a detailed history of changes since the first release of this document**

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Chapter #	*Title*	*Pages*	*Size (kbytes)*	*SLOW Main server*
	WHOLE DOCUMENT (last revision 3JAN07, version 4.29!)	1,633	13,248	
	Preface and Table of Contents	124	842	
1	Introduction	125	1,001	
2	U.S. Government Background	139	1,017	
3	Legal Authority for Income Taxes in the United States	177	1,371	
4	Know Your Citizenship Status and Resulting Rights!	182	1,683	

5	The Evidence: Why We Aren't Liable to File Returns or Pay Income Tax	325	2,572	
6	History of Federal Government Income Tax Fraud, Racketeering, and Extortion in the U.S.A.	153	1,231	
7	Case Studies	68	458	
8	Resources for Tax Freedom Fighters	9	92	
9	Definitions	12	101	

The Great IRS Hoax book draws on works from several prominent sources and authors, such as:

1. The U.S. Constitution.
2. The Family Constitution
3. Amendments to the U.S. Constitution.
4. The Declaration of Independence.
5. The United States Code (U.S.C.), Title 26 (Internal Revenue Code), both the current version and amended past versions.
6. U.S. Supreme Court Cases.
7. U.S. Tax Court findings.
8. The Code of Federal Regulations (CFR), Title 26, both the current version and amended past versions.
9. IRS Forms and Publications (directly from the IRS Website at http://www.irs.gov).
10. U.S. Treasury Department Decisions.
11. Federal District Court cases.
12. Federal Appellate (circuit) court cases.
13. Several websites.
14. A book called *Losing Your Illusions* by Gordon Phillips of the Inform America organization (http://www.informamerica.com).
15. Case studies of IRS enforcement tactics (http://www.neo-tech.com/irs-class-action/).
16. Case studies of various tax protester groups.
17. The IRS' own publications about Tax Protesters.
18. A book entitled *Why No One is Required to File Tax Returns* by William Conklin (http://www.anti-irs.com)
19. Writings of Thomas Jefferson, the author of the Declaration of Independence.
20. Department of Justice, Tax Division, Criminal Tax Manual

Below is a complete outline of the content of this very extensive work:

3.14.2 1883: Butchers' Union Co. v. Crescent City Co. (111 U.S. 746)
3.14.3 1894: Caha v. United States (152 U.S. 211)
3.14.4 1895: Pollack v. Farmer's Loan and Trust Company (157 U.S. 429, 158 U.S. 601)
3.14.5 1900: Knowlton v. Moore (178 U.S. 41)
3.14.6 1901: Downes v. Bidwell (182 U.S. 244)
3.14.7 1906: Hale v. Henkel (201 U.S> 43)
3.14.8 1911: Flint v. Stone Tracy Co. (*220 U.S. 107)*
3.14.9 1914: Weeks v. U.S. (*232 U.S. 383)*
3.14.10 1916: Brushaber vs. Union Pacific Railroad (*240 U.S. 1)*
3.14.11 1916: Stanton v. Baltic Mining (240 U.S. 103)
3.14.12 1918: Peck v. Lowe (247 U.S. 165)
3.14.13 1920: Evens v. Gore (253 U.S. 245)
3.14.14 1920: Eisner v. Macomber (252 U.S. 189)
3.14.15 1922: Bailey v. Drexel Furniture Co. (259 U.S. 20)
3.14.16 1924: Cook v. Tait (265 U.S. 47)
3.14.17 1930: Lucas v. Earl (281 U.S. 111)
3.14.18 1935: Railroad Retirement Board v. Alton Railroad Company (295 U.S. 330)
3.14.19 1938: Hassett v. Welch (303 U.S. 303)
3.14.20 1945: Hooven & Allison Co. v. Evatt (324 U.S. 652)
3.14.21 1959: Flora v. U.S. (362 U.S. 145)
3.14.22 1960: U.S. v. Mersky (361 U.S. 431)
3.14.23 1961: James v. United States (366 US 213, p. 213, 6L Ed 2d 246)
3.14.24 1970: Brady v. U.S. (379 U.S. 742)
3.14.25 1974: California Bankers Association v. Shultz (416 U.S. 25)
3.14.26 1975: Garner v. U.S. (424 U.S. 648)
3.14.27 1976: Fisher v. United States (425 U.S. 391)
3.14.28 1978: Central Illinois Public Service Co. v. United States (435 U.S. 21)
3.14.29 1985: U.S. v. Doe (465 U.S. 605)
3.14.30 1991: Cheek v. United States (498 U.S. 192)
3.14.31 1992: United States v. Burke (504 U.S. 229, 119 L Ed 2d 34, 112 S Ct. 1867)
3.14.32 1995: U.S. v. Lopez (000 U.S. U10287)

3.15 Federal District and Circuit Court Cases

3.15.1 Commercial League Assoc. v. The People, 90 Ill. 166
3.15.2 Jack Cole Co. vs. Alfred McFarland, Sup. Ct. Tenn 337 S.W. 2d 453
3.15.3 1916: Edwards v. Keith 231 F 110, 113
3.15.4 1925: Sims v. Ahrens, 271 SW 720
3.15.5 1937: Stapler v. U.S., 21 F. Supp. AT 739
3.15.6 1937: White Packing Co. v. Robertson, 89 F.2d 775, 779 the 4th Circuit Court
3.15.7 1939: Graves v. People of State of New York (306 S.Ct. 466)
3.15.8 1943: Helvering v. Edison Brothers' Stores, 8 Cir. 133 F2d 575
3.15.9 1946: Lauderdale Cemetary Assoc. v. Mathews, 345 PA 239, 47 A. 2d 277, 280
3.15.10 1947: McCutchin v. Commissioner of IRS, 159 F2d 472 5th Cir. 02/07/1947
3.15.11 1952: Anderson Oldsmobile , Inc. vs Hofferbert, 102 F. Supp. 902
3.15.12 1955: Oliver v. Halstead, 196 VA 992, 86 S.E. 2d 858
3.15.13 1958: Lyddon Co. vs. U.S., 158 Fed. Supp 951
3.15.14 1960: Commissioner of IRS v. Duberstein, 80 5. Ct. 1190
3.15.15 1962: Simmons v. United States, 303 F.2d 160
3.15.16 1969: Conner v. U.S. 303 F. Supp. 1187 Federal District Court, Houston
3.15.17 1986: U.S. v. Stahl, 792 F.2d 1438

3.16 IRS Publications

3.17 Topical Legal Discussions

3.17.1 Uncertainty of the Federal Tax Laws
3.17.2 Reasonable Cause

4.4 The Constitution is Supposed to make You the Sovereign and The Government Your Servant

4.5 The U.S.A. is a Republic, Not a Democracy

4.6 The Three Definitions of "United States"

5.5 Why We aren't Liable to *File* Tax Returns or Keep Records

5.6 Why We Aren't Liable to Pay Income Tax

5.7 Flawed Tax Arguments to Avoid

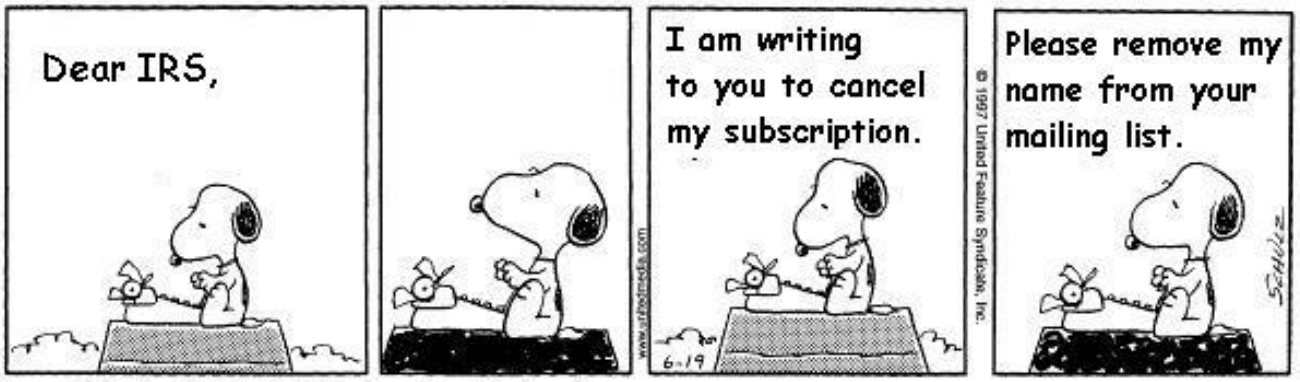
5.8 Considerations Involving Government Employment Income

5.9 So What Would Have to Be Done To the Constitution To Make Direct Income Taxes Legal?

5.10 Abuse of Legal Ignorance and Presumption: Weapons of tyrants

6.5 History of Congressional Cover-Ups and Tax Code Obfuscation

6.6 Treasury/IRS Cover-Ups, Obfuscation, and Scandals



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Test for Federal Tax Professionals: Questions that Stop the IRS Dead in Their Tracks and Silence "The Ignorance of Foolish Men"

Questions in Web Browser format

Questions in Acrobat Format (right click to download)

Questions in Microsoft Word format (right click to download)

This article is done in satisfaction of the following Bible passage from 1 Peter 2: 13-17:

> ***Submit yourselves to every ordinance of man for the Lord's sake****: whether it be to the king, as supreme;*
>
> *Or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well.*
>
> ***For so is the will of God, that with well doing ye may PUT TO SILENCE THE IGNORANCE OF FOOLISH MEN:***
>
> *As free, and not using [your] liberty for a cloke of maliciousness, but as the servants of God.*
>
> *Honour all [men]. Love the brotherhood. Fear God. Honour the king.*

The focus of this article is to attempt to understand and submit to the "ordinances of man". It does so by providing a list of canned questions tailored for specific circumstances or situations you are likely to face with the IRS. The answer to each question is provided before it is asked by revealing the research the answer is based on. The questions also appear as a form in section 15.1 of The Great IRS Hoax for your reuse. These questions are carefully designed to very quickly and very succinctly bring the IRS to their senses and force them to face the truth and what the law says about our lack of liability for whatever it is that they are trying to hold us accountable for. We use the UCC and their lack of response to establish fact that immunizes us against prosecution. Because IRS revenue agents are not taught to know the law and instead are taught to follow canned procedures, we have devoted special attention to make the questions brief, relatively simple, and easy for even a busy revenue agent to verify. We also advise you, when submitting these questions to the IRS, to encourage them to seek legal advice if they aren't sure about the correct answer, not unlike what they do when responding to some of the things we send them.

When (or if) you get the answers back, we provide at the beginning of each of the subsequent subsections, a list of sections within this document that both the questions and the answers were derived from so that you can research the IRS' answers for yourselves if they decide to try to obfuscate or intimidate you.

The basis for the requirement for the questions in this article derives specifically from section 8.3.1 and section 8.4.4.4 of The Great IRS Hoax. Section 8.4.4.4 is where we recommended using IRS incompetency and the Uniform Commercial Code (U.C.C.) to shift the burden of proof over to the IRS to prove our specific liability. One of the guidelines appearing in that section was to submit a short list of *legal questions* (not moral or ethical questions, which will be ignored and called frivolous) to the IRS that address the foundation of the issues they have. Each question must containing default answers derived from specific sections of the Internal Revenue Code and the Treasury Regulations that we have personally researched, which is also your way of notifying them of your position on the issue. By using questions, we establish firm ground for the good faith basis of our beliefs and convictions about our lack of legal liabilities. We also

establish a basis to reproach the agents we can identify by name that we are working with openly in court and in front of the jury for being ignorant, irresponsible, unresponsive, incompetent, and downright evil. The questions in this section are intended to demonstrate:

1. What our beliefs are.
2. That our beliefs are in good faith with no intent to abdicate our lawful responsibilities or deceive, but instead we want to understand and be educated if we are in error.
3. That we are not a person who is liable for the penalty or tax they claim we owe.
4. The foundation of our belief is based on detailed and disciplined study of the Internal Revenue Code, the Treasury Regulations (26 CFR), and the rulings of the federal courts.
5. We wish to comply with the law as written and expect the same out of the IRS.
6. If the agent reading the letter does not understand the law, then he is admonished to seek legal counsel just like they routinely advise us in their letters.
7. We wish to challenge the legal basis of the authority of the IRS and the agent we are in contact with to make the claims he/she is making.
8. That we insist on proper and complete identification of all persons we are dealing with in case they must be sued or criminally prosecuted for malfeasance or extortion under the color of office.
9. That all communications must be *in writing* and signed by a real person using their real legal name.
10. That the public trust position of the agent we are dealing with requires them to act morally and ethically and as a fiduciary in pursuit of *our*, not the *government's*, best interests. We need to remind them that they are "public servants": we are the "public" and they are the "servants".
11. That good faith dealings demand a personal response from them on all issues we raise and a measure of personal responsibility and accountability on their part, rather than ignoring our communications and continuing to harass us with threatening and anonymous automated communications. To do so without justified cause would constitute fraud. This requirement is consistent with the Code of Ethics for Federal Employees we talked about earlier in section 2.1

9-20.000
MARITIME, TERRITORIAL AND INDIAN JURISDICTION

9-20.100 Introduction

This chapter contains the Department's policy relating to maritime, territorial and Indian jurisdiction. Useful background material can also be found in the Criminal Resource Manual:

Maritime, Territorial and Indian Jurisdiction -- Generally	Criminal Resource Manual at 662
Special Maritime and Territorial Jurisdiction	Criminal Resource Manual at 663
Territorial Jurisdiction	Criminal Resource Manual at 664
Determining Federal Jurisdiction	Criminal Resource Manual at 665
Proof of Territorial Jurisdiction	Criminal Resource Manual at 666
Assimilative Crimes Act, 18 U.S.C. § 13	Criminal Resource Manual at 667
Limited Criminal Jurisdiction Over Property Held Proprietorially	Criminal Resource Manual at 668

Prosecution of Military Personnel	Criminal Resource Manual at 669
Maritime Jurisdiction	Criminal Resource Manual at 670
Great Lakes Jurisdiction	Criminal Resource Manual at 671
General Maritime Offenses	Criminal Resource Manual at 672
Aircraft Jurisdiction	Criminal Resource Manual at 673
Indian Jurisdiction	
Indian Country -- Introduction	Criminal Resource Manual at 674
Investigative Jurisdiction	Criminal Resource Manual at 675
MOU re Indian Law Enforcement Reform Act	Criminal Resource Manual at 676
Indian Country Defined	Criminal Resource Manual at 677
The General Crimes Act -- 18 U.S.C. § 1152	Criminal Resource Manual at 678
The Major Crimes Act -- 18 U.S.C. § 1153	Criminal Resource Manual at 679
Lesser Included Offenses Under 18 U.S.C. § 1153	Criminal Resource Manual at 680
Indian Jurisdiction -- Tribal Options	Criminal Resource Manual at 681
Successive Prosecutions	Criminal Resource Manual at 682
"Victimless Crimes"	Criminal Resource Manual at 683
Memorandum for Benjamin R. Civiletti Re Jurisdiction Over "Victimless" Crimes Committed by Non-indians on Indian Reservations	Criminal Resource Manual at 684
Exclusive Federal Jurisdiction Over Offenses by Non-Indians Against Indians	Criminal Resource Manual at 685
Who is an "Indian"?	Criminal Resource Manual at 686
Tribal Court Jurisdiction	Criminal Resource Manual at 687

State Jurisdiction	Criminal Resource Manual at 688
Jurisdictional Summary	Criminal Resource Manual at 689
Embezzlement and Theft from Tribal Organization	Criminal Resource Manual at 690
Indian Gaming	Criminal Resource Manual at 691

9-20.115 Prosecution of Military Personnel

Many violations of Federal criminal law are also violations of the Uniform Code of Military Justice (U.C.M.J.) for which military personnel are subject to court martial (e.g., drug offenses, theft of government property, etc.). The U.C.M.J. also punishes a number of acts which are not otherwise specifically declared to be Federal crimes, but which may become such when committed on a facility over which the United States exercises legislative jurisdiction as a result of the assimilation of state law under the Assimilative Crimes Act. *See* Criminal Resource Manual at 667.

To avoid conflict over investigative and prosecutive jurisdiction, the Attorney General and the Secretary of Defense executed a memorandum of understanding (MOU) relating to the investigation and prosecution of crimes over which the Department of Justice and Department of Defense have concurrent jurisdiction. The agreement provides generally that all crimes committed on military reservations by individuals subject to the Uniform Code of Military Justice shall be investigated and prosecuted by the military department concerned, with certain exceptions. The agreement permits civil investigation and prosecution in Federal district court in any case when circumstances render such action more appropriate. If questions arise concerning the operation of the agreement, the United States Attorney should contact the section of the Criminal Division having responsibility over the Federal statute allegedly violated. *See* the Criminal Resource Manual at 669, for the text of the MOU.

9-20.220 Investigative Jurisdiction -- Indian Country Offenses

In 1993, the Department of Justice and the Department of the Interior entered into a memorandum of understanding (MOU) that established guidelines regarding the respective jurisdictions of the Bureau of Indian Affairs (BIA) and the Federal Bureau of Investigation (FBI). *See* the Criminal Resource Manual at 675. Part IV of the MOU requires each United States Attorney whose criminal jurisdiction includes Indian country to develop local written guidelines outlining the responsibilities of the BIA, FBI, and the Tribal Criminal Investigators, if applicable. *See* the Criminal Resource Manual at 676, for the full text of the MOU.

9-20.230 Supervising Section -- Indian Country Offenses

The Office of Enforcement Operations of the Criminal Division has general supervisory responsibility for Indian country offenses. However, the Child Exploitation and Obscenity Section has responsibility for child abuse offenses, and other Sections, such as the Terrorism and Violent Crime Section, should be consulted on questions involving the substantive elements of offenses within their areas of responsibility. See USAM 9-4.000 for statutory assignments of the various Sections. The Appellate, General Litigation, and Indian Resources Sections of the Environment and Natural Resources Division have Indian country expertise and should be consulted on questions of tribal rights, treaties, boundaries and related matters.

9-4.000
STATUTES ASSIGNED BY CITATION

9-4.010 Introduction

The statutes currently administered by the Criminal Division have been assigned to the following Sections and Offices:

Appellate Section	APP
Asset Forfeiture and Money Laundering Section	AFMLS
Child Exploitation and Obscenity Section	CEOS
Capital Case Unit	CCU
Computer Crime and Intellectual Property Section	CCIPS
Counterespionage Section	CES
Counterterrorism Section	CTS
Domestic Security Section	DSS
Executive Office of the Organized Crime Drug Enforcement Task Forces	OCETF
Fraud Section	FRAUD
International Criminal Training Assistance Program	ICTAP
Narcotic and Dangerous Drug Section	NDDS
Office of Enforcement Operations	OEO
Office of International Affairs	OIA
Office of Policy and Legislation	OPL
Office of Special Investigations	OSI
Organized Crime and Racketeering Section	OCRS

Organized Crime and Racketeering Section (Labor Unit)	OCRS (L)
Public Integrity Section	PIN

The statutes are arranged by the United States Code Titles. Listed under each Title are: (1) the statutory designation in the left column, (2) the administering Section, as abbreviated above, with a telephone number in the center column, and (3) the investigating agency in the right column. When no particular Section has primary responsibility for a statute, the designation "All" will appear. Whenever a single asterisk (*) appears after the statutory designation, consultation with the Criminal Division is required in accordance with USAM 9-2.120. Whenever a double asterisk (**) appears after the statutory designation, special approval from the Criminal Division must be obtained in accordance with USAM 9-2.110.

A. The Section to be contacted with respect to the violation of a particular statute will be that Section listed except in the following cases:

1. Whenever it is determined that known organized crime figures are involved in any case, supervision of such case is assigned to the Organized Crime and Racketeering Section regardless of the statute involved.

2. Whenever it is determined that a public official is involved in any case involving misuse of office, supervision of such case is assigned to the Public Integrity Section, regardless of the statute involved.

3. Whenever any case involves a criminal activity affecting national defense or foreign relations, the Counterespionage Section must be consulted, regardless of the statute involved.

4. Whenever any matter or case involves domestic or international terrorism, weapons of mass destruction, the acquisition of any weapons or explosive, where such action is undertaken by known or suspected terrorists (international or domestic), the Counter Terrorism Section must be consulted, regardless of the statute involved. Authorization to initiate any case or investigation involving international terrorism must be obtained from the Criminal Division through the Counterterrorism Section.

5. Whenever any case involves a statute in the jurisdiction of the Criminal Division that authorizes civil or criminal forfeiture, questions concerning forfeiture should be referred to the Asset Forfeiture and Money Laundering Section (514-1263), while questions concerning the underlying substantive offense should be referred to the Section with responsibility for the criminal statute.

6. Whenever any matter or case involves (1) violence (or the threat thereof) directed at a person or property; unless it concerns terrorism or an Internationally Protected Person, the Domestic Security Section is the Section to consult.

B. The Appellate Section should be contacted with respect to questions or problems concerning the Speedy Trial Act (514-2611) and questions on bail (514-3521).

C. The Office of Policy and Legislation should be contacted with respect to questions or problems concerning the grand jury (514-3202).

D. The Office of Enforcement Operations should be contacted with respect to questions or problems concerning the following:

1. Grand jury and special attorney authorizations (606-4705);

2. Pre-trial diversion (514-5541);

3. Witness immunity (514-5541);

4. Subpoenas issued to Department of Justice employees under 28 C.F.R. §; 16.21 (606-4730);

5. Closure of judicial proceedings under 28 C.F.R. §;50.9 (606-4730);

6. Subpoenas issued to members of the news media under 28 C.F.R. §; 50.10 (606-4730);

7. Processing of tax disclosure requests under 26 U.S.C. §; 6103 (606-4730);

8. Authorization of electronic surveillance (514-3684);

9. Witness protection (514-3684);

10. Rule 6(e)(3)(C)(iv) disclosures (514-4730);

11. Right to Financial Privacy under 12 U.S.C. §; 3401-3422 (606-4730);

12. Searches for documentary evidence held by disinterested third parties, *e.g.*, lawyers, doctors, clergymen, under 28 C.F.R. part 59 (Legal Support Unit-514-0856);

13. Electronic surveillance checks under 18 U.S.C. §; 3504 (606-4730);

14. Privacy Protection Act/42 U.S.C. 2000aa (Legal Support Unit - 514-0856) [except for searches of computers or electronic evidence (CCIPS)];

15. S-VISA applications (S-VISA Unit - 514-3684);

16. Deputation of personnel in Inspectors General Offices as Special Deputy U.S. Marshals (Deputation Unit - 514-3684);

17. Legislative histories of criminal laws (Legislative History and Gambling Devices Unit - 514-1333);

18. International prisoner transfer matters (International Prisoner Transfer Unit-514-3173);

19. Freedom of Information Act/Privacy Act matters inside the Criminal Division, including litigation support (FOIA/PA Unit, 616-0307); and

20. Gambling device registration (Legislative History and Gambling Devices Unit-514-1333).

E. The Office of International Affairs (514-0000) must be contacted:

1. Before contacting any foreign or State Department official in matters relating to criminal

investigations or prosecutions;

a. Except when notifying a foreign consul of the arrest of a national of the consul's country;

b. Except for emergency preservation in foreign countries of electronic evidence which is susceptible to damage or destruction, or for emergency preservation of such evidence in the U.S. on behalf of foreign countries (CCIPS).

2. Before any proposed contact with persons, other than United States investigative agents, in a foreign country;

3. Before attempting to do any act in Switzerland or other continental European countries relating to a criminal investigation or prosecution, including contacting a witness by telephone or mail;

4. Before issuing any subpoena to obtain records located in a foreign country, and before seeking the enforcement of any such subpoena; and

5. Before serving a subpoena on an officer of, or attorney for, a foreign bank or corporation, who is temporarily in, or passing through the United States, when the testimony sought relates to the officers or attorney's duties in connection with the operation of the bank or corporation.

F. The Computer Crime and Intellectual Property Section (514-1026) should be contacted regarding the following:

1. Investigations under the Economic Espionage Act, 18 U.S.C. 1832, Theft of Trade Secrets. **

2. Online Undercover Investigations.

3. For emergency preservation in foreign countries of electronic evidence which is susceptible to damage or destruction, or for emergency preservation of such evidence in the U.S. on behalf of foreign countries.

4. In legal or policy questions involving the collection of electronic information or evidence, including search and seizure, wiretap, trap and trace and pen registers, the Electronic Communications Privacy Act [18 U.S.C. 2701], and the Privacy Protection Act [42 U.S.C. 2000aa] ** in cases involving electronic evidence.

9-4.100 Statutory Responsibilities General to All Criminal Division Sections and Offices

The assignment of responsibility for the following sections of the United States Code is general in nature and not specific to any Office or Section of the Criminal Division. Because of this, all Sections and Offices of the Criminal Division are responsible for the sections listed below.

9-4.112, 2 U.S.C.: The Congress
§;§;193-194

9-4.115, 5 U.S.C.: Executive Departments
§;552

9-4.123, 12 U.S.C.: Banks and Banking
§;§;209, 211, 324

9-4.129, 18 U.S.C.: Crimes and Criminal Procedure
§;§;1-6, 10, 14, 18-20, 151, 218, 371, 401-402, 2236, 3013, 3041-3044, 3046-3050, 3052-3053, 3056 [although 3056 (b) and (d) are listed as OEO], 3059-3061, 3103a, 3105, 3107, 3109, 3237-3238, 3281-3282, 3285, 3287-3290, 3321-3322, 3331-3334, 3432, 3481, 3500-3502, 3571-3574, 3611, and 3691-3692.

9-4.135, 22 U.S.C.: Foreign Relations and Intercourse
§;2667

9-4.139, 26 U.S.C.: Internal Revenue Code
§;§;7201-7209

9-4.142, 28 U.S.C.: Judiciary and Judicial Procedure
§;§;455, 1822, 2255

9-4.112 2 U.S.C.: The Congress

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§167a-g	OEO	(202) 514-6809	FBI
§192	OEO*	(202) 514-6809	FBI
§§193-194	All		None
§§261-270	CES*	(202) 514-1187	FBI
§§381-396	PIN	(202) 514-1412	FBI
§§431-455	PIN*	(202) 514-1412	FBI
Except			
§441e	CES*	(202) 514-1187	FBI (Only in cases involving foreign agents or those who should be registered as foreign agents)

9-4.114 4 U.S.C.: Flag and Seal

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§3	FRAUD	(202) 514-7023	FBI

9-4.115 5 U.S.C.: Executive Departments

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§552	All		None
§552(a)(i)	PIN	(202) 514-1412	FBI
§3333	CES	(202) 514-1187	FBI
§7311	CES	(202) 514-1187	FBI
§8193	OEO	(202) 514-6809	

9-4.117 7 U.S.C.: Agriculture

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§2-26	FRAUD*	(202) 514-7023	Agriculture (Off. of Investigations)
§§51-65	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§71-85	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§87b(a)(1)-(5), (10), (11)	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)

§87c	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§87f(e)	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§95-96	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§149	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§150bb, ee, gg	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§154	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§156-163	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§164a	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§166	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§167	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§181-231	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§250	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§270	FRAUD	(202) 514-7023	Agriculture (Off. of

			Investigations)
§§281-282	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§472	PIN	(202) 514-1412	FBI
§473c-1, c-2	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§491	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§499a-r	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§503	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§511i, k	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§581	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§586	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§591	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§596	FRAUD	(202) 514-7023	Agriculture
§§607-608a	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
Except			
§608a	AFMLS (forfeiture only)	(202) 514-1263	Agriculture (Off. of Investigations)

§608c(14)	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§608d-624	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§855	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§953	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
Except			
§§1010-1011	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§1373	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§1379i(b), (d)	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§1427 note	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§1471j	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§1551-1611	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
Except			
§1595	AFMLS (forfeiture only)	(202) 514-1263	Agriculture (Off. of Investigations)
§1622(h)	FRAUD	(202) 514-7023	Agriculture

§1642(c)	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§1986	PIN	(202) 514-1412	FBI
§2023(a)-(b)	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§2024(b)-(c)	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§2024(g)	AFMLS*	(202) 514-1263	Agriculture (Off. of Investigations)
§§2114-2115	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§2131-2147	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§2149	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§2151-2156	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
Except			
§2156	AFMLS (forfeiture only)	(202) 514-1263	Agriculture (Off. of Investigations)
§2270	OEO	(202) 514-6809	Agriculture (Off. of Investigations)
§2274	OEO	(202) 514-6809	None
§2619(c)	PIN	(202) 514-1412	FBI
§2621(b)	FRAUD	(202) 514-7023	Agriculture (Off. of

			Investigations)
§2623	PIN	(202) 514-1412	FBI
§2706	PIN	(202) 514-1412	FBI
§2807	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§3806	FRAUD	(202) 514-7023	Agriculture (Animal and Plant Health Inspection)

9-4.118 8 U.S.C.: Aliens and Nationality

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§1101(a)(15)(S)	OEO	(202) 514-6809	None
§1182	DSS	(202) 616-5731	D.H.S. (general classes of aliens ineligible to receive visas and excluded from admission)
§1185	DSS	(202) 616-5731	(travel control of citizens and aliens)
§1226	DSS	(202) 616-5731	(exclusion of aliens)
§1251	DSS	(202) 616-5731	(general classes of deportable aliens)
§1252	DSS	(202) 616-5731	D.H.S. (apprehension and deportation of aliens)
§1252(a)	DSS	(202) 616-5731	(deportation of criminal aliens)
§1253	DSS	(202) 616-5731	(penalties relating to removal)
§1256	DSS	(202) 616-5731	D.H.S. (rescission of adjustment of status)

§1281 DSS (202) 616-5731 D.H.S.
(alien crewmen; report of illegal landings)

§1282 DSS (202) 616-5731 D.H.S.
(conditional permits to land temporarily)

§1283 DSS (202) 616-5731 D.H.S.
(hospital treatment of certain diseased alien crewmen afflicted with certain diseases)

§1284 DSS (202) 616-5731 D.H.S.
(control of alien crewmen)

§1285 DSS (202) 616-5731 D.H.S.
(employment on passenger vessels of aliens afflicted with certain disabilities)

§1286 DSS (202) 616-5731 D.H.S.
(discharge of alien crewmen; penalties)

§1287 DSS (202) 616-5731 D.H.S.
(alien crewmen brought into the United States with intent to evade immigration laws; penalties)

§1301 DSS (202) 616-5731 D.H.S.
(aliens seeking entry)

§1302 DSS (202) 616-5731 D.H.S.
(registration of aliens)

§1303 DSS (202) 616-5731 D.H.S.
(registration of special groups)

§1304 DSS (202) 616-5731 D.H.S.
(forms of registration and fingerprinting)

§1305 DSS (202) 616-5731 D.H.S.
(notices of change of address)

§1306 DSS (202) 616-5731 D.H.S.
(penalties)

§1321 DSS (202) 616-5731 D.H.S.
(prevention of unauthorized landing of aliens)

§1322 DSS (202) 616-5731 D.H.S.
(bringing in subject to disability or afflicted with disease aliens; persons liable; clearance papers; exceptions; "person" defined)

§1323	DSS	(202) 616-5731	D.H.S.
	(unlawful bringing of aliens into United States)		
§1324	DSS	(202) 616-8385	D.H.S.
	(bringing in and harboring certain aliens) (possible death penalty when death results from the offense)		
§1324a	DSS	(202) 616-5731	D.H.S.
	(unlawful employment of aliens)		
§1324b	DSS	(202) 616-5731	D.H.S.
	(unlawful immigration-related employment practices)		
§1324c	DSS	(202) 616-5731	D.H.S.
	(penalties for document fraud)		
§1324d	DSS	(202) 616-5731	D.H.S.
	(civil penalties for failure to depart)		
§1325	DSS	(202) 616-0849	D.H.S.
	(entry of alien at improper time or place; misrepresentation and concealment of facts)		
§1326	DSS	(202) 616-5731	D.H.S.
	(re-entry of deported alien; criminal penalties for re-entry of certain deported aliens)		
§1327	DSS	(202) 616-0849	D.H.S.
	(aiding or assisting certain aliens to enter)		
§1328	DSS	(202) 616-0849	D.H.S.
	(importation of alien for immoral purposes)		
§1329	DSS	(202) 616-5731	D.H.S.
	(jurisdiction of district courts)		
§1330	DSS	(202) 616-5731	D.H.S.
	(collection of penalties and expenses)		
§1357(a), (b)	OEO	(202) 514-6809	D.H.S.

9-4.121 10 U.S.C.: Armed Forces

STATUTE	**CRIMINAL DIVISION**	**TELEPHONE #**	**AGENCY WITH INVESTIGATIVE**

	SECTION		JURISDICTION
§§331-335	OEO	(202) 514-6809	None
§§371-381	NDDS	(202) 514-0917	Defense
§808	OEO	(202) 514-6809	None
§847	OEO	(202) 514-6809	FBI
§976	OEO	(202) 514-6809	Defense
§7678	OEO	(202) 514-6809	FBI

9-4.123 12 U.S.C.: Banks and Banking

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§25a	OCRS	(202) 514-3595	FBI
§92a(h)	FRAUD	(202) 514-7023	FBI
§§95-95b	FRAUD	(202) 514-7023	Treasury
Except			
§§95a-95b	FRAUD	(202) 514-7023	
§209	All		None
§211	All		None
§324	All		None
§339	OCRS	(202) 514-3595	FBI
§374a	FRAUD	(202) 514-7023	FBI
§378	FRAUD	(202) 514-7023	FBI
§582	FRAUD	(202) 514-7023	FBI
§617	FRAUD	(202) 514-7023	FBI
§630	FRAUD	(202) 514-7023	FBI
§631	FRAUD	(202) 514-7023	FBI

§1141j(b)-(d)	FRAUD	(202) 514-7023	FBI
§1457(a)	FRAUD	(202) 514-7023	FBI
§1464(d)(12)	FRAUD	(202) 514-7023	FBI
§1701(d)(4)	PIN	(202) 514-1412	None
§1709-2	FRAUD	(202) 514-7023	FBI
§1715z-4	FRAUD	(202) 514-7023	FBI
§1723a(e)	FRAUD	(202) 514-7023	FBI
§1725(g)	FRAUD	(202) 514-7023	FBI
§1730(p)	FRAUD	(202) 514-7023	FBI
§1730a(d), (i)-(j)	FRAUD	(202) 514-7023	FBI
§1730c	OCRS	(202) 514-3595	FBI
§1738(a)	FRAUD	(202) 514-7023	FBI
§1750b(a)	FRAUD	(202) 514-7023	FBI
§1786(k)	FRAUD	(202) 514-7023	FBI
§1818(j)	FRAUD	(202) 514-7023	FBI
§1829a	OCRS	(202) 514-3595	FBI
§1829b	FRAUD	(202) 514-7023	None
§1832	FRAUD	(202) 514-7023	FBI
§1847	FRAUD	(202) 514-7023	FBI
§§1881-1884	OEO	(202) 514-6809	FBI
§1909	FRAUD	(202) 514-7023	FBI
§§1956-1957	FRAUD	(202) 514-7023	FBI
§2607	FRAUD	(202) 514-7023	FBI

§§3401-3422	OEO	(202) 514-6809	Legal Support Unit (d)

9-4.124 13 U.S.C.: Census

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§211-214	PIN	(202) 514-1412	FBI
§§221-225	OEO	(202) 514-6809	FBI
§§304-305	CES	(202) 514-1187	FBI

9-4.125 14 U.S.C.: Coast Guard

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§83-85	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§431(c)	FRAUD	(202) 514-7023	FBI
§638(b)	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§639	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§892	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)

9-4.126 15 U.S.C.: Commerce and Trade

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§6	AFMLS	(202) 514-1263	FBI

§50	FRAUD (only first three ¶s)	(202) 514-7023	FBI
	PIN (only last ¶)	(202) 514-1412	FBI
§77	AFMLS	(202) 514-1263	S.E.C.
§§77a-77bbbb	FRAUD*	(202) 514-7023	S.E.C.
§§78a-78kk	FRAUD*	(202) 514-7023	S.E.C.
except			
§78m(b)	FRAUD**	(202) 514-7023	S.E.C.
§78dd-1, dd-2	FRAUD**	(202) 514-7023	S.E.C.
§§78aaa-78lll	FRAUD	(202) 514-7023	S.E.C.
§§79-79z6	FRAUD	(202) 514-7023	S.E.C.
§80a-1	FRAUD	(202) 514-7023	S.E.C.
80b-1	FRAUD*	(202) 514-7023	S.E.C.
§158	FRAUD	(202) 514-7023	Commerce (China Trade Act Registrar)
§§231-235	FRAUD	(202) 514-7023	Commerce (National Bureau of Standards)
§241	FRAUD	(202) 514-7023	Commerce (National Bureau of Standards)
§§291-300	FRAUD	(202) 514-7023	None
§330d	FRAUD	(202) 514-7023	Commerce (National Oceanic and Atmospheric Administration)
§§375-378	FRAUD	(202) 514-7023	FBI

§645(a)-(c)	FRAUD	(202) 514-7023	FBI
§714m(a)-(f)	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§§715a-m	FRAUD	(202) 514-7023	Interior
§§717-717w	FRAUD	(202) 514-7023	Fed. Power Comm.
§1004	FRAUD	(202) 514-7023	FBI
§1007	FRAUD	(202) 514-7023	FBI
§§1171-1178	OCRS	(202) 514-3595	FBI
Except			
§1173	OEO	(202) 514-6809	None (Registration only)
§1177	AFMLS	(202) 514-1263	FBI
§1195	AFMLS	(202) 514-1263	F.T.C.
§§1241-1244	DSS (switchblade knife)	(202) 616-5731	FBI
§1245	DSS	(202) 616-5731	FBI
§1265	AFMLS	(202) 514-1263	FBI
§1644	FRAUD	(202) 514-7023	U.S.P.S. (Postal Inspection Service)
§1693n	FRAUD	(202) 514-7023	FBI
§1717	FRAUD	(202) 514-7023	HUD (Office of Interstate Land Sales)
§§1821-1825	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§2071(b)	AFMLS	(202) 514-1263	None
§2104	AFMLS	(202) 514-1263	D.H.S. (Customs)
§2615	FRAUD	(202) 514-7023	E.P.A. FBI if major investigation

			is required
§3414(c)	FRAUD	(202) 514-7023	Federal Regulatory Commission
§3414(n)	FRAUD	(202) 514-7023	

9-4.127 16 U.S.C.: Conservation

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§3	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§9a	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§26	OEO	(202) 514-6809	Interior--FBI if major investigation is required
	AFMLS (forfeiture only)	(202) 514-1263	Interior--FBI if major investigation is required
§45(e)	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§60	OEO	(202) 514-6809	Interior
§63	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§65	OEO	(202) 514-6809	Interior
§92	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§98	OEO	(202) 514-6809	Interior--FBI if major investigation is required

§99	AFMLS	(202) 514-1263	Interior
§114	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§117c	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§117d	AFMLS	(202) 514-1263	Interior
§123	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§127	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§128	AFMLS	(202) 514-1263	Interior
§146	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§152	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§170	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§171	OEO	(202) 514-6809	Interior
§198c	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§198d	AFMLS	(202) 514-1263	Interior
§204c	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§204d	AFMLS	(202) 514-1263	Interior
§256b	OEO	(202) 514-6809	Interior--FBI if major investigation

			is required
§256c	AFMLS	(202) 514-1263	Interior
§351	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§§352-353	OEO	(202) 514-6809	Interior
§354	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§364	FRAUD	(202) 514-7023	Interior--FBI if major investigation is required
§371	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§373	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§374	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§395c	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§395d	AFMLS	(202) 514-1263	Interior
§403c-3	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§403c-4	AFMLS	(202) 514-1263	Interior
§403h-3	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§403h-4	AFMLS	(202) 514-1263	Interior
§404c-3	OEO	(202) 514-6809	Interior--FBI if major investigation is required

§404c-4	AFMLS	(202) 514-1263	Interior
§408k	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§408l	AFMLS	(202) 514-1263	Interior
§413	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§414	OEO	(202) 514-6809	Defense (Superintendent of Military Park)
§422d	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§423f	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§423g	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§425g	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§426i	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§428i	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§§430h,i,q	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§430v	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§433	OEO	(202) 514-6809	Interior--FBI if major investigation

			is required
§460d	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§460k-3	OEO	(202) 514-6809	Interior
§§460l-6a	OEO	(202) 514-6809	Interior
§460n-5	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§462(k)	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§470ee	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§470gg(b)	AFMLS	(202) 514-1263	D.H.S. (Customs)
§551	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§552a-d	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§559	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§§604-606	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§668b(b)	AFMLS	(202) 514-1263	Interior--FBI if major investigation is required
§668dd(c), (e)-(f)	OEO	(202) 514-6809	Interior
Except			
§668dd(f)	AFMLS (forfeiture only)	(202) 514-1263	Interior

§670j	OEO	(202) 514-6809	Agriculture (Off. of Investigations); Interior
§670j(c)	AFMLS	(202) 514-1263	Interior
§676	OEO	(202) 514-6809	Interior
§683	OEO	(202) 514-6809	Interior
§685	OEO	(202) 514-6809	Interior
§689b	OEO	(202) 514-6809	Interior
§690d-g	OEO	(202) 514-6809	Interior--FBI if major investigation is required
Except			
§690e(b)	AFMLS (forfeiture only)	(202) 514-1263	Interior--FBI if major investigation is required
§692a	OEO	(202) 514-6809	Interior
§693a	OEO	(202) 514-6809	Interior
§694a	OEO	(202) 514-6809	Interior
§707	AFMLS	(202) 514-1263	Interior
§718e-g	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§§726-727	OEO	(202) 514-6809	Interior--FBI if major investigation is required
Except			
§727(c)	AFMLS	(202) 514-1263	Interior
§730	OEO	(202) 514-6809	Interior--FBI if major investigation is required
§§742j-1(e)	AFMLS	(202) 514-1263	Interior

§773h	AFMLS	(202) 514-1263	Interior
§776c(b)	AFMLS	(202) 514-1263	Interior
§§791-825e	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§825f	FRAUD	(202) 514-7023	Interior--FBI if major investigation is required
§825o	FRAUD	(202) 514-7023	Fed. Power
§831t	OEO	(202) 514-6809	FBI (Larceny and embezzlement)
	FRAUD	(202) 514-7023	FBI (Other offenses)
§916f	AFMLS	(202) 514-1263	Commerce
§957	OEO	(202) 514-6809	Commerce; Interior; D.H.S. (Coast Guard)
§959	OEO	(202) 514-6809	Commerce; Interior; D.H.S. (Coast Guard)
§1029 (1, 2, 5)	OEO	(202) 514-6809	Commerce; Interior; D.H.S. (Coast Guard)
§1030(a), (b)	OEO	(202) 514-6809	Commerce; Interior; D.H.S. (Coast Guard)
§1030(c)	AFMLS	(202) 514-1263	Commerce; Interior; D.H.S. (Coast Guard)
§1167	OEO	(202) 514-6809	Interior
§1172(e), (f)	AFMLS	(202) 514-1263	Commerce; Interior
§1182	OEO	(202) 514-6809	Interior
§1184	OEO	(202) 514-6809	Interior

§1246(i)	OEO	(202) 514-6809	Agriculture (Off. of Investigations); Interior
§1372	OEO	(202) 514-6809	Interior
§1376	AFMLS	(202) 514-1263	
§1540	OEO AFMLS (forfeiture only)	(202) 514-6809 (202) 514-1263	Commerce (National Oceanic and Atmospheric Admin.); Interior; D.H.S. (Coast Guard);Treasury
§1860	AFMLS	(202) 514-1263	Interior
§2409	AFMLS	(202) 514-1263	Commerce (National Oceanic and Atmospher. Admin.); Interior; D.H.S. Coast Guard); D.H.S. (Customs)
§§243 -2439	OEO	(202) 514-6809	D.H.S. (Coast Guard)
§§3372-3373	OEO	(202) 514-6809	Interior
§3374	AFMLS	(202) 514-1263	Interior
§3606(c)	AFMLS	(202) 514-1263	Interior

9-4.128 17 U.S.C.: Copyrights

STATUTE	**CRIMINAL DIVISION SECTION**	**TELEPHONE #**	**AGENCY WITH INVESTIGATIVE JURISDICTION**
§116(d)	CCIPS	(202) 514-1026	FBI
§§506(a)-507	CCIPS	(202) 514-1026	FBI
Except			
§506(b)	AFMLS*	(202) 514-1263	FBI

§509(a)	AFMLS*	(202) 514-1263	FBI
§603(a),(b)	CCIPS	(202) 514-1026	FBI
§603(c)	AFMLS*	(202) 514-1263	D.H.S. (Customs)

9-4.129 18 U.S.C. 1-2712: Crimes

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§1-6	All		None
§7	OEO	(202) 514-6809	FBI
§8	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
§9	OEO	(202) 514-6809	FBI
§10	All		None
§11	FRAUD	(202) 514-7023	FBI
§12	OEO	(202) 514-6809	U.S.P.S.
§13	OEO	(202) 514-6809	FBI
§14	All		None
§15	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
§16	DSS	(202) 616-5731	None
§17	OEO	(202) 514-6809	None
§§18-20	All		None
§§31-35	CTS	(202) 514-0849	FBI
§36	NDDS	(202) 514-0917	FBI
§37	CTS	(202) 514-0849	FBI
§43	CTS	(202) 514-0849	FBI

§45	CES**	(202) 514-1187	FBI
§46	FRAUD	(202) 514-7023	Interior; Agriculture (Off. of Investigations)
§81	DSS (arson in SMTJ)	(202) 616-5731	FBI
§111	DSS (assault on federal officers)	(202) 616-5731	
§112	CTS	(202) 514-0849	FBI
§113	DSS (assaults within special maritime and territorial jurisdiction (SMTJ))	(202) 616-5731	
§114	DSS (maiming within SMTJ)	(202) 616-5731	
§115	DSS (murdering family member of federal officials) (possible death penalty when death results from the offense)	(202) 616-5731	
§151	All		None
§§152-155	FRAUD	(202) 514-7023	FBI
§§175-178	CTS	(202) 514-0849	BI
§§201-213	PIN*	(202) 514-1412	FBI
except			
§201(d)-(e) (h)-(i)	FRAUD	(202) 514-7023	FBI
§§214-216	FRAUD	(202) 514-7023	FBI
	PIN	(202) 514-1412	FBI
§217	PIN	(202) 514-1412	FBI
§218	All		None
§219	CES**	(202) 514-1187	FBI
§224	OCRS	(202) 514-3595	FBI

§225	FRAUD	(202) 514-7023	FBI
§228	CEOS	(202) 514-5780	FBI
§§229-229F	CTS	(202) 514-0849	FBI
§§231-233	CTS*	(202) 514-0849	FBI
§§241-242	PIN* (Only federal election issues, and then only if no racial or religious issue involved;all other issues assigned to Civil Rights Division)	(202) 514-1412	FBI
§245(b)(1)	OEO** (Only if no racial or religious issue)	(202) 514-6809	FBI
§245(b)(1)(A)	PIN** (attempts by force or threat to interfere with the electoral process)	(202) 514-1412	Federal Election Commission
§245(b)(3)	CTS**	(202) 514-0849	FBI
§246	PIN*	(202) 514-1412	FBI
§285	OEO	(202) 514-6809	FBI
§§286-287	FRAUD	(202) 514-7023	FBI
§288	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§§289-290	FRAUD	(202) 514-7023	FBI
§291	PIN	(202) 514-1412	FBI
§292	FRAUD	(202) 514-7023	FBI
§331	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
§332	PIN	(202) 514-1412	FBI
§333	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
§334	PIN	(202) 514-1412	FBI
§§335-337	FRAUD	(202) 514-7023	Federal Reserve

§§342-343	FRAUD	(202) 514-7023	Transportation
§351	CTS	(202) 514-0849	FBI
§371	All		None
§372	DSS	(202) 616-5731 (conspiring to injure federal officer)	
§373	DSS	(202) 616-5731 (solicitation of a crime of violence)	FBI
§§401-402	All		None
§403	CEOS	(202) 514-5780	FBI
§§431-433	PIN	(202) 514-1412	FBI
§§435-437	PIN	(202) 514-1412	FBI
§§438-439	OEO	(202) 514-6809	FBI
§§440-442	PIN	(202) 514-1412	FBI
§443	FRAUD	(202) 514-7023	FBI
§§471-491	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
Except			
§475	FRAUD*	(202) 514-7023	D.H.S. (Secret Service)
§489	FRAUD*	(202) 514-7023	D.H.S. (Secret Service)
§492	FRAUD*	(202) 514-7023	D.H.S. (Secret Service)
§§492-495	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
§§497-499	FRAUD	(202) 514-7023	Agency involved; F.B.I or Secret Service if major investigation involved
§500	FRAUD	(202) 514-7023	U.S.P.S.

§§501-502	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
§503	FRAUD	(202) 514-7023	U.S.P.S.
§504	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
§505	FRAUD	(202) 514-7023	FBI
§506	FRAUD	(202) 514-7023	FBI
§507	FRAUD	(202) 514-7023	FBI
§§508-509	FRAUD	(202) 514-7023	FBI
§510	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
§511	FRAUD	(202) 514-7023	FBI
§512	AFMLS	(202) 514-1263	FBI
§513	FRAUD	(202) 514-7023	FBI
§521	DSS (criminal street gangs)	(202) 616-5731	FBI, DEA, DOJ (ATF)
§§541-548	FRAUD	(202) 514-7023	D.H.S. (Customs)
Except			
§§542, 544, 545, 548	AFMLS (forfeiture only)	(202) 514-1263	D.H.S. (Customs)
§549	FRAUD	(202) 514-7023	FBI
§550	FRAUD AFMLS* (forfeiture only)	(202) 514-7023 (202) 514-1263	D.H.S. (Customs)
§553	FRAUD	(202) 514-7023	D.H.S. (Customs)
§§592-609	PIN*	(202) 514-1412	FBI
§611	DSS (alien voting in federal election)	(202) 616-5731	
§§641-642	FRAUD	(202) 514-7023	FBI

§§643-655	PIN	(202) 514-1412	FBI
§§656-658	FRAUD	(202) 514-7023	FBI
§§659-660	OEO	(202) 514-6809	FBI
§§661-662	OEO	(202) 514-6809	FBI
§663	FRAUD	(202) 514-7023	FBI
§664	OCRS(L)	(202) 514-3595	FBI, Labor(Pension & Welfare Benefits Admin.); Office of Labor (Racketeering)
§665(a)-(b)	FRAUD	(202) 514-7023	FBI
§665(c)	FRAUD	(202) 514-7023	FBI
§666(a)-(b)	FRAUD	(202) 514-7023	FBI
§666(c)	PIN	(202) 514-1412	FBI
§667	OEO	(202) 514-6809	FBI
§668	OEO (Taking by fraud should be referred to the Fraud Section, 514-7023)	(202) 514-6809	FBI
§700	FRAUD*	(202) 514-7023	FBI
§§701-712	FRAUD	(202) 514-7023	FBI
§713(a)	FRAUD (Matters involving fund-raising and/or public officials)	(202) 514-7023	FBI
§713(b)	FRAUD	(202) 514-7023	FBI
§715	FRAUD	(202) 514-7023	FBI
§§751-755	OEO	(202) 514-6809	FBI
§§756-757	CES**	(202) 514-1187	FBI
§758	DSS (high speed flight from immigration checkpoint)	(202) 616-5731	
§§792-799	CES**	(202) 514-1187	FBI

Except			
§§793,794	AFMLS (Forfeiture Only)	(202) 514-1263	FBI
§831-832	CTS	(202) 514-0849	FBI
§836 (Federal explosives control)	DSS	(202) 616-5731	Transportation Highway Admin.)
§§841-843	DSS (explosives control)	(202) 616-5731	DOJ (ATF)
§844	DSS (explosives control) (possible death penalty when death results from the offense)	(202) 616-5731	
Except			
§844(c)	AFMLS	(202) 514-1263	DOJ (ATF); FBI; U.S.P.S. (Postal Inspection Service)
§844(d)-(j),(m)	CTS	(202) 514-0849	DOJ (ATF); F.B.I; U.S.P.S. (Postal Inspection Service)
§844(i)	CTS	(202) 514-0849	DOJ (ATF)
	OCRS(L) (labor dispute)	(202) 514-3595	DOJ (ATF)
§§845-848	DSS	(202) 514-0849	DOJ (ATF)
§871	CTS*	(202) 514-0849	D.H.S. (Secret Service)
§872	PIN	(202) 514-1412	FBI
§873	CTS	(202) 514-0849	FBI
§874	FRAUD	(202) 514-7023	G.S.A.; FBI
§875	CTS	(202) 514-0849	FBI
§876(a)-(c)	CTS	(202) 514-0849	FBI

§876(d)	CTS	(202) 514-0849	FBI; U.S.P.S. (Postal Inspection Service)
§877(¶¶ 1-3)	CTS	(202) 514-0849	FBI
§877(¶ 4)	CTS	(202) 514-0849	FBI; U.S.P.S.
§§878-880	CTS	(202) 514-0849	FBI
§§891-894	OCRS	(202) 514-3595	FBI
§911	DSS (false impersonation)	(202) 616-5731	
§§912-917	FRAUD	(202) 514-7023	FBI
§921	DSS	(202) 616-5731	
§922	DSS	(202) 616-5731	
§923	DSS	(202) 616-5731	
§924	DSS	(202) 616-5731	
§924 (c)(j)	DSS (murder with firearm during federal crime of violence) (possible death penalty when death results from the offense)	(202) 616-5731	
§924(d)	AFMLS	(202) 514-1263	DOJ (ATF)
§924(e)	DSS	(202) 616-5731	DOJ (ATF); D.E.A.
§925	DSS	(202) 616-5731	
§926	DSS	(202) 616-5731	
§927	DSS	(202) 616-5731	
§928	DSS	(202) 616-5731	
§929	DSS	(202) 616-5731	FBI
§930	DSS (possession of a firearm in a federal facility)	(202) 616-5731	
§930 (c)	DSS (murder with firearm in federal facility) (possible death penalty when death results from the offense)	(202) 616-5731	

§931	DSS (202) 616-5731 (prohibition on purchase, ownership, or possession of body armor by violent felons (**added on 11/02/02**))		
§§951-967	CES**	(202) 514-1187	FBI
Except			
§956	DSS	(202) 616-5731	FBI
§§962-967	AFMLS (forfeiture only)	(202) 514-1263	FBI
§970(a)	OEO	(202) 514-6809	FBI
§970(b)	CTS	(202) 514-0849	FBI
§§981-982	AFMLS	(202) 514-1263	FBI; D.H.S. (Customs); D.E.A.; I.R.S.; Postal Service
§984	AFMLS	(202) 514-1263	FBI; D.H.S. (Customs); D.E.A.; I.R.S.; Postal Service
§986	AFMLS	(202) 514-1263	FBI; Treasury D.E.A.; I.R.S.; Postal Service
§1001	FRAUD*	(202) 514-7023	FBI
§§1002-1007	FRAUD	(202) 514-7023	FBI
§§1010-1014	FRAUD	(202) 514-7023	FBI
§1015	DSS (false statements in naturalization, citizenship, or alien registry; false claim of citizenship to receive benefit to vote)	(202) 616-5731	D.H.S.
§1016	FRAUD	(202) 514-7023	FBI
§1017	FRAUD	(202) 514-7023	FBI
§§1018-1026	FRAUD	(202) 514-7023	FBI
§1027	OCRS(L)	(202) 514-3595	FBI; Labor (Pension & Welfare Benefits Administration) & Office of Labor (Racketeering)

§1028	FRAUD	(202) 514-7023	FBI
§1029	FRAUD	(202) 514-7023	Secret Service
§1029(7)-(8)	CCIPS	(202) 514-1026	
§1030(a)(1)	CES**	(202) 514-1187	FBI
§1030(a)(2)-(c)	CCIPS	(202) 514-1026	FBI; Secret Service
§1031	FRAUD	(202) 514-7023	FBI
§1032	FRAUD	(202) 514-7023	FBI; F.D.I.C.
§1038	CTS	(202) 514-0849	FBI
§1071	DSS (concealing a person from arrest)	(202) 616-5731	FBI
§1072	DSS (concealing an escaped prisoner)	(202) 616-5731	FBI
§1073	DSS (flight to avoid prosecution or giving testimony)	(202) 616-5731	FBI
§1074	DSS (flight to avoid prosecution for damaging or destroying any building or other real or personal property)	(202) 616-5731	FBI
§§1081-1083	OCRS	(202) 514-3595	D.H.S. (Customs)
Except			
§1082(c)	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1084	OCRS	(202) 514-3595	FBI
§§1091-1093	CTS (genocide) (consultation with DSS/CTS required before instituting any criminal process under torture, war crimes, and genocide statutes) (possible death penalty when death results from the offense)	(202) 514-0849	FBI
§1111	DSS (murder in special maritime and territorial jurisdiction (SMTJ)) (possible death penalty when death results from	(202) 616-5731	

	the offense)		
§1112	DSS (manslaughter in SMTJ) (possible death penalty when death results from the offense)	(202) 616-5731	
§1113	DSS (attempt to commit murder or manslaughter in SMTJ)	(202) 616-5731	
§1114	DSS (murder of federal officials) (possible death penalty when death results from the offense)	(202) 616-5731	
§1115	FRAUD	(202) 514-7023	FBI
§1116	CTS	(202) 514-0849	FBI
§1117	DSS (conspiracy to commit murder)	(202) 616-5731	
§1118	DSS (murder by federal prisoner) (possible death penalty when death results from the offense)	(202) 616-5731	
§1119	DSS (foreign murder where both the victim and perpetrator are U.S. nationals) (possible death penalty when death results from the offense)	(202) 616-5731	
§1120	DSS (murder by escaped prisoner) (possible death penalty when death results from the offense)	(202) 616-5731	
§1121	DSS (killing persons aiding federal investigations or certain state correctional officers) (possible death penalty when death results from the offense)	(202) 616-5731	
§§1151-1153	OEO	(202) 514-6809	FBI
§§1154-1156	OCRS	(202) 514-3595	Interior
§§1158-1160	OEO	(202) 514-6809	FBI
§1161	OCRS	(202) 514-3595	No Offense

§§1162-1165	OEO	(202) 514-6809	FBI; Interior (BIA)
Except			
§1165	AFMLS (forfeiture only)	(202) 514-1263	FBI; Interior (BIA)
§§1166-1168	OEO	(202) 514-6809	FBI; Interior (BIA)
§1169	CEOS	(202) 514-5780	None
§1170	OEO	(202) 514-6809	FBI; Interior (BIA)
§1201	DSS (kidnaping (except subsection (a)(4) involving an IPP)) (possible death penalty when death results from the offense)	(202) 616-5731	
§1202	DSS (kidnap ransom)	(202) 616-5731	FBI
§1203	CTS	(202) 514-0849	FBI
§1204	CEOS (international parental kidnaping)	(202) 514-5780	FBI
§1231	OCRS(L)*	(202) 514-3595	FBI
§§1262-1265	OCRS	(202) 514-3595	DOJ (ATF)
§1301	OCRS	(202) 514-3595	D.H.S. (Customs)
§§1302-1303	OCRS	(202) 514-3595	U.S.P.S. (Postal Inspection Service)
§1304	OCRS	(202) 514-3595	FBI
§1305	OCRS	(202) 514-3595	D.H.S. (Customs)
§1306	OCRS	(202) 514-3595	FBI
§1307	OCRS	(202) 514-3595	No Offense
§§1341-1343	FRAUD PIN*	(202) 514-7023 (202) 514-1412	U.S.P.S. (Postal Inspection Service) (election law fraud)
§§1344-1345	FRAUD	(202) 514-7023	FBI
§§1361-1366	CTS	(202) 514-0849	FBI

Except

§1362	CTS (in cases of physical damage) CCIPS (in cases of electronic damage)	(202) 514-0849 (202) 514-1026	FBI FBI
§1363	DSS (damaging property in SMTJ)	(202) 616-5731	
§1367	CCIPS	(202) 514-1026	F.C.C.; FBI
§1381	OEO*	(202) 514-6809	FBI
§1382	OEO	(202) 514-6809	FBI
§§1384-1385	OEO	(202) 514-6809	FBI
§1384	CEOS	(202) 514-5780	
§1421	DSS (accounts of court)	(202) 616-5731	D.H.S.
§1422	DSS (fees in naturalization proceedings)	(202) 616-5731	D.H.S.
§1423	DSS (misuse of evidence of citizenship or naturalization)	(202) 616-5731	D.H.S.
§1424	DSS (personation or misuse of papers in naturalization)	(202) 616-5731	D.H.S.
§1425	DSS (procurement of citizenship or naturalization unlawfully)	(202) 616-5731	D.H.S.
§1426	DSS (reproduction of naturalization or citizenship papers)	(202) 616-5731	D.H.S.
§1427	DSS (sale of naturalization of citizenship papers)	(202) 616-5731	D.H.S.
§1428	DSS (surrender of canceled naturalization certificate)	(202) 616-5731	D.H.S.
§1429	DSS (penalties for neglect or refusal to answer subpoena)	(202) 616-5731	D.H.S.
§1467	AFMLS	(202) 514-1263	U.S.P.S. (Postal Inspection Service); FBI

§1501	DSS	(202) 616-5731	FBI
	(assault on a process server)		
§1502	DSS	(202) 616-5731	
	(resistance to extradition agent (when violence-including threat thereof-is directed at a person or propertty; otherwise OEO))		
§1503	DSS	(202) 616-5731	
	(injuring court officer or juror (when violence-including threat thereof-is directed at a person or property; otherwise OEO))		
§§1504-1510	FRAUD	(202) 514-7023	FBI
Except			
§1509	DSS	(202) 616-5731	
	(interference with court orders (when violence-including a threat thereof-is directed at a person or property; otherwise OEO))		
§1511	OCRS	(202) 514-3595	FBI
§1512	DSS	(202) 616-5731	
	(killing a witness (when violence-including threat thereof-is directed at a person or property; otherwise Office of Enforcement Operations))		
	(possible death penalty when death results from the offense)		
§1513	DSS	(202) 616-5731	
	(retaliating against a witness(when violence-including threat thereof-is directed at a person or property; otherwise OEO))		
	(possible death penalty when death results from the offense)		
§1515	FRAUD	202) 514-7023	FBI
§1516-1517	FRAUD	202) 514-7023	FBI
§1541	DSS	(202) 616-5731	
	(issuance of passports and visas; authority)		
§1542	DSS	(202) 616-5731	
	(false statement in application and use of passport)		
§1543	DSS	(202) 616-5731	
	(forgery or false use of passport)		

§1544	DSS (misuse of passport)	(202) 616-5731	
§1545	DSS (safe conduct violations)	(202) 616-5731	
§1546	DSS (fraud and misuse of visas, permits and other documents)	(202) 616-5731	
§§1589-1592	Civil Rights Division		
Except			
§1591	CEOS	(202) 514-5780	FBI
§§1621-1623	FRAUD	(202) 514-7023	FBI
§§1651-1661	CTS	(202) 514-0849	FBI
§§1691-1699	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§1693	AFMLS	(202) 514-1263	
§1700	PIN	(202) 514-1412	None
§§1701-1702	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§1703	PIN	(202) 514-1412	None
§§1704-1708	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§§1709-1713	PIN	(202) 514-1412	FBI
§1715	DSS (mailing firearms)	(202) 616-5731	U.S.P.S. (Postal Inspection Service)
§1716	DSS (mailing destructive devices (when the nonmailable article is an explosive or is intended to cause violent injury to a person or property; otherwise OEO)	(202) 616-5731	U.S.P.S. (Postal Inspection Service)
§1716A, B, C	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)

§1717	CTS	(202) 514-0849	
§§1719-1720	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§1721	PIN	(202) 514-1412	FBI
§§1722-1725	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§1726	PIN	(202) 514-1412	FBI
§§1728-1731	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§1732	PIN	(202) 514-1412	FBI
§§1733-1734	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§§1735-1737	CEOS	(202) 514-5780	U.S.P.S. (Postal Inspection Service)
§1738	FRAUD	(202) 514-7023	FBI
§1751	CTS	(202) 514-0849	FBI
§1752	OEO	(202) 514-6809	Secret Service
§§1761-1762	OEO	(202) 514-6809	FBI
Except			
§1762(b)	AFMLS	(202) 514-1263	FBI
§§1791-1792	OEO	(202) 514-6809	FBI
§1793	OEO	(202) 514-6809	FBI
§1821	OEO	(202) 514-6809	FBI
§1831	CES** (CCIPS, only if domestic)	(202) 514-1187	FBI
§1832	CCIPS**	(202) 514-1026	FBI
§§1851-1861	OEO	(202) 514-6809	FBI
§1863	OEO	(202) 514-6809	FBI
§1864	OEO	(202) 514-6809	FBI; Interior

§§1901-1902	PIN	(202) 514-1412	FBI
§1903	FRAUD	(202) 514-7023	FBI
§1905	PIN*	(202) 514-1412	FBI
§§1906-1907	PIN	(202) 514-1412	FBI
§§1909-1910	PIN	(202) 514-1412	FBI
§1911	FRAUD	(202) 514-7023	FBI
§§1912-1913	PIN*	(202) 514-1412	FBI
§§1915-1917	PIN	(202) 514-1412	FBI
§1918(1)-(2)	CES**	(202) 514-1187	FBI
§1918(3)-(4)	CTS	(202) 514-0849	FBI
§§1919-1923	FRAUD	(202) 514-7023	FBI
§1924	CES**	(202) 514-1187	FBI
§1951	DSS (Hobbs Act-interference with commerce by robbery)	(202) 616-5731	FBI
§§1952-1953	OCRS	(202) 514-3595	FBI
Except			
§1952(b)(2)	PIN (Bribery involving public servants)	(202) 514-1412	FBI
§1954	OCRS(L)	(202) 514-3595	FBI; Labor (Pension and Welfare Benefits Administration and Office of Labor Racketeering)
§1955	OCRS (Forfeiture only)	(202) 514-3595	FBI
§1955(d)	AFMLS	(202) 514-1263	FBI
§§1956-1957	AFMLS**	(202) 514-1263	Treasury; I.R.S.: D.E.A.; FBI
§1958	DSS (murder for hire)	(202) 616-5731	

	(possible death penalty when death results from the offense)		
§1959	OCRS**	(202) 514-3595	FBI
§1960	AFMLS**	(202) 514-1263	Treasury; I.R.S.: D.E.A.; FBI
§§1961-1968	OCRS**	(202) 514-3595	FBI
	CEOS*	(202) 514-5780	FBI
	(Obscenity only)		
§1963	AFMLS*	(202) 514-1263	FBI
	(Forfeiture only)		
§1991	DSS	(202) 616-5731	
	(train robbery and murder)		
§§1992-1993	CTS	(202) 514-0849	FBI
§2071(a)	OEO	(202) 514-6809	FBI
§§2071(b)-2073	PIN	(202) 514-1412	FBI
§2074	FRAUD	(202) 514-7023	FBI
§§2075-2076	PIN	(202) 514-1412	FBI
§§2101-2102	CTS *	(202) 514-0849	FBI
§2111	DSS	(202) 616-5731	FBI
	(robbery in SMTJ)		
§2112	DSS	(202) 616-5731	
	(robbery of U.S. property)		
§2113	DSS	(202) 616-5731	
	(bank robbery)		
	(possible death penalty when death results from the offense)		
§2114	DSS	(202) 616-5731	FBI; U.S.P.S.
	(postal robbery and receipt of proceeds)		
§§2115-2116	OEO	(202) 514-6809	FBI
§2117	OEO	(202) 514-6809	FBI
§2118	NDDS**	(202) 514-0917	FBI

§2119	DSS (carjacking) (possible death penalty when death results from the offense)	(202) 616-5731	FBI
§§2151-2157	CES**	(202) 514-1187	FBI
§§2191-2196	OEO	(202) 514-6809	FBI
§2197	OEO	(202) 514-6809	FBI
§2198	OEO	(202) 514-6809	FBI
§2199	OEO	(202) 514-6809	FBI
§2231	DSS (assault upon a person executing a search warrant)	(202) 616-5731	
§§2232-2233	FRAUD	(202) 514-7023	FBI
§§2234-2235	PIN	(202) 514-1412	FBI
§2236	ALL		None
§§2241-2248	DSS (sexual abuse (when the victim is an adult-i.e., 18 years of age or older-otherwise CEOS))	(202) 616-5731	
§§2251-2252	CEOS*	(202) 514-5780	FBI; U.S.P.S. (Postal Inspection Services); D.H.S. (Customs)
§§2253-2254	AFMLS	(202) 514-1263	FBI; U.S.P.S.
			(Postal Inspection Service); D.H.S. (Customs)
	CEOS	(202) 514-5780	
§2253	OPL	(202) 514-3202	
§§2255-2259	CEOS	(202) 514-5780	F.B.I; U.S.P.S. (Postal Inspection Service); D.H.S. (Customs)
§2255	OPL	(202) 514-3202	
§2258	CEOS	(202) 514-5780	FBI
§2261	DSS (interstate domestic violence)	(202) 616-5731	

§2261A	DSS (interstate stalking)	(202) 616-5731	
§2262	DSS (interstate violation of protective order)	(202) 616-5731	
§§2271-2278	CTS	(202) 514-0849	FBI
Except			
§2274	AFMLS (Forfeiture only)	(202) 514-1263	FBI
§2279	OEO	(202) 514-6809	FBI
§§2280-2281	CTS	(202) 514-0849	FBI
§§2311-2317	OEO	(202) 514-6809	FBI
§2318-2320	CCIPS	(202) 514-1026	FBI
Except			
§2318(d)	AFMLS	(202) 514-1263	FBI
§2321	OEO	(202) 514-6809	FBI
§§2331-2339(b)	CTS	(202) 514-0849	FBI
Except			
§2332(d)	CES	(202) 514-1187	FBI, D.H.S. (Customs)
§2332(f)	CTS	(202) 514-0849	FBI
§2339A-D	CTS	(202) 514-0849	FBI
§§2340-2340B	CTS (torture) (consultation with DSS/CTS is required before instituting any criminal process under torture, war crimes, or genocide) (possible death penalty when death results from the offense)	(202) 514-0849	FBI
§§2341-2346	OCRS	(202) 514-3595	FBI; DOJ (ATF)
Except			

§2344(c)	AFMLS	(202) 514-1263	FBI; DOJ (ATF)
§§2381-2391	CES**	(202) 514-1187	FBI
§§2421-2424	CEOS*	(202) 514-5780	FBI; D.H.S. (Customs)
§2441	CTS (war crimes) (consultation with DSS/CTS is required before instituting any criminal process under torture, war crimes, or genocide) (possible death penalty when death results from the offense)	(202) 514-0849	
§§2510-2522 (except as assigned to CCIPS)	OEO	(202) 514-6809	No Offense
§§2510-2515	CCIPS (advice and policy for computers and electronic communications, except pagers, and for enforcement of criminal provisions in 2511-2)	(202) 514-1026	FBI
§2516	OEO**	(202) 514-6809	No Offense
§2517	OEO	(202) 514-6809	No Offense
§2518	OEO**	(202) 514-6809	No Offense
§§2519-2522	OEO	(202) 514-6809	No Offense
§§2701-2709 (including criminal offense, 2701)	CCIPS	(202) 514-1026	FBI
§2711	CCIPS	(202) 514-1026	No Offense
§2712	CTS	(202) 514-0849	FBI

9-4.130 18 U.S.C. 3000-: Procedure

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§3013	All		None
§§3041-3044	All		None

§§3046-3050	All		None
§§3052-3053	All		None
§3055	OEO	(202) 514-6809	None
§3056	All		None
§3056(b)	OEO	(202) 514-6809	FBI
§3056(d)	CTS	(202) 514-0849	FBI
§3057	FRAUD	(202) 514-7023	FBI
§3058	CES**	(202) 514-1187	D.H.S.; FBI
§3059B	DSS	(202) 616-5731	
(Attorney General's General Reward Authority (**repealed on 11/02/02**))			
§§3060-3061	All		None
§3062	OEO	(202) 514-6809	FBI
§3063	OEO	(202) 514-6809	None
§§3071-3077	CTS	(202) 514-0849	FBI
§3103a	All		None
§3105	All		None
§3107	All		None
§3109	All		None
§3113	AFMLS	(202) 514-1263	None
§3117	OEO	(202) 514-6809	FBI
§3118	OEO	(202) 514-6809	FBI
§3121	CCIPS	(202) 514-1026	FBI
§§3122-3124	OEO	(202) 514-6809	No Offense
(for wire communications and pagers)			
§§3122-3124	CCIPS	(202) 514-1026	No Offense
(for computers and electronic communications, except pagers)			
§3125	OEO**	(202) 514-6809	No Offense

§§3126-3127	OEO (for wire communications and pagers)	(202) 514-6809	No Offense
§§3126-3127	CCIPS (for computers and electronic communications, except pagers)	(202) 514-1026	No Offense
§§3141-3156	OPL	(202) 514-3202	None
§§3161-3174	APP	(202) 514-3521	None
§§3181-3196	OIA	(202) 514-4676	None
§3236	DSS (venue for murder)	(202) 616-5731	None
§§3237-3238	All		None
§§3242-3243	OEO	(202) 514-6809	None
§3244	OEO	(202) 514-6809	No Offense
§§3281-3282	All		None
§3283	FRAUD	(202) 514-7023	None
§3284	FRAUD	(202) 514-7023	None
§3285	All		None
§3286	CTS	(202) 514-0849	None
§§3287-3290	All		None
§3291	DSS	(202) 616-5731	None
§3292	OIA	(202) 514-4676	None
§3293	FRAUD	(202) 514-7023	FBI
§§3321-3322	All		None
§§3331-3334	All		None
§§3401-3402	OEO	(202) 514-6809	None
§3432	All		None
§3435	OEO	(202) 514-6809	FBI
§3481	All		None

§3487	PIN	(202) 514-1412	FBI
§3488	OCRS	(202) 514-3595	None
§§3491-3495	OIA	(202) 514-4676	None
§3497	PIN	(202) 514-1412	FBI
§§3500-3502	All		None
§3504	OEO	(202) 514-6809	FBI
§§3505-3506	OIA	(202) 514-4676	None
§3507	OIA*	(202) 514-4676	None
§3508	OIA	(202) 514-4676	Interpol
§3509	CEOS	(202) 514-5780	None
§3521	NDDS	(202) 514-0197	U.S. Marshals Service
§§3521-3528	OEO**	(202) 514-6809	None
§3553	NDDS	(202) 514-0917	None
§3554	AFMLS	(202) 514-1263	None
§§3561-3566	OEO	(202) 514-6809	Bureau of Prisons
§3566	OPL	(202) 514-3062	
§§3571-3574	All		None
§§3581-3586	OPL	(202) 514-3202	None
§§3591-3598	CCU	(202) 514-0849	None
	NDDS	(202) 514-0917	None
§3591(b)	NDDS	(202) 514-0917	DEA
§3606	OEO	(202) 514-6809	Commerce
§3607	NDDS	(202) 514-0917	D.H.S. (Coast Guard)
§3611	All		None
§3612	PIN	(202) 514-1412	FBI
§§3613-3615	OEO	(202) 514-6809	FBI

§§3621-3625	OEO	(202) 514-6809	FBI
§§3661-3662	OEO	(202) 514-6809	FBI
§3671	CTS	(202) 514-0849	FBI
§§3681-3682	AFMLS	(202) 514-1263	None
§§3691-3692	All		None
§3731	APP	(202) 514-3521	None
§4001	OEO	(202) 514-6809	Bureau of Prisons
§4004	OEO	(202) 514-6809	Bureau of Prisons
§4012	OEO	(202) 514-6809	Bureau of Prisons
§§4081-4086	OEO	(202) 514-6809	Bureau of Prisons
§§4100-4115	OEO	(202) 514-6809	None
§§4241-4247	OEO	(202) 514-6809	Bureau of Prisons
§4282	OEO	(202) 514-6809	Bureau of Prisons; U.S. Marshals Service
§4285	OEO	(202) 514-6809	Bureau of Prisons; U.S. Marshals Service
§5001	DSS (surrender to state authorities)	(202) 616-5731	FBI; U.S. Marshals Service
§5003	DSS (surrender to state authorities)	(202) 616-5731	Bureau of Prisons
§§5031-5042 (juvenile delinquency)	DSS	(202) 616-5731	Bureau of Prisons; FBI
§6001	OEO	(202) 514-6809	None
§§6002-6003	OEO**	(202) 514-6809	None
§§6004-6005	OEO	(202) 514-6809	None

9-4.131 18 U.S.C.: Appendix

STATUTE	CRIMINAL	TELEPHONE #	AGENCY WITH

	DIVISION SECTION		INVESTIGATIVE JURISDICTION
Interstate Agreement on Detainers	OEO	(202) 514-6809	FBI
F.R.Cr.P.	APP	(202) 514-3521	None
	OPL	(202) 514-3202	None
III	CES	(202) 514-1187	None

9-4.132 19 U.S.C.: Customs Duties

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§60	PIN	(202) 514-1412	FBI
§70	OEO	(202) 514-6809	D.H.S. (Customs)
§81s	FRAUD	(202) 514-7023	Treasury
§130	AFMLS	(202) 514-1263	D.H.S. (Customs)
§282	AFMLS	(202) 514-1263	D.H.S. (Customs)
§467	AFMLS	(202) 514-1263	D.H.S. (Customs)
§468	AFMLS	(202) 514-1263	I.R.S.
§469	AFMLS	(202) 514-1263	FBI
§482	FRAUD	(202) 514-7023	None
§507	FRAUD	(202) 514-7023	Treasury
§§1304-1305	CES (treasonous literature)	(202) 514-1187	FBI; D.H.S. (Customs)
	CEOS (obscene materials)	(202) 514-5780	
	OEO (all other material)	(202) 514-6809	FBI; D.H.S. (Customs)
	AFMLS	(202) 514-1263	FBI; Treasury

§1322	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1338(f)	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1341	FRAUD	(202) 514-7023	FBI
§1401	NDDS	(202) 514-0917	D.H.S. (Customs)
§1432	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1436	FRAUD	(202) 514-7023	D.H.S. (Customs)
	AFMLS (forfeiture only)	(202) 514-1263	
§1438	FRAUD	(202) 514-7023	D.H.S. (Customs)
§§1449-1455	FRAUD	(202) 514-7023	D.H.S. (Customs)
Except			
§1453	AFMLS (forfeiture only)	(202) 514-1263	D.H.S. (Customs)
§1462	FRAUD	(202) 514-7023	D.H.S. (Customs)
	AFMLS (forfeiture only)	(202) 514-1263	D.H.S. (Customs)
§§1464-1465	FRAUD	(202) 514-7023	D.H.S. (Customs)
Except			
§1464	AFMLS (forfeiture only)	(202) 514-1263	D.H.S. (Customs)
§1466	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1497	FRAUD	(202) 514-7023	D.H.S. (Customs)
	AFMLS (forfeiture only)	(202) 514-1263	D.H.S. (Customs)
§1510	FRAUD	(202) 514-7023	D.H.S. (Customs)
§1510(b)	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1526	AFMLS (forfeiture only)	(202) 514-1263	D.H.S. (Customs)
§1527	FRAUD	(202) 514-7023	D.H.S. (Customs)
	AFMLS (forfeiture only)	(202) 514-1263	D.H.S. (Customs)

§§1581-1582	FRAUD	(202) 514-7023	D.H.S. (Customs)
§§1584-1587	FRAUD	(202) 514-7023	D.H.S. (Customs)
	AFMLS	(202) 514-1263	D.H.S. (Customs)
	(forfeiture only)		
§1588	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1590	NDDS	(202) 514-0917	D.H.S. (Customs)
	AFMLS	(202) 514-1263	D.H.S. (Customs)
	(forfeiture only)		
§1592	FRAUD	(202) 514-7023	D.H.S. (Customs)
Except			
§1592(c)(5)	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1594	AFMLS	(202) 514-1263	D.H.S. (Customs)
	(Forfeiture only)		
§1595(a)	FRAUD	(202) 514-7023	D.H.S. (Customs)
	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1595a	FRAUD	(202) 514-7023	D.H.S. (Customs)
	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1599	PIN	(202) 514-1412	D.H.S. (Customs)
§§1602-1618	FRAUD	(202) 514-7023	D.H.S. (Customs)
§1620	PIN	(202) 514-1412	FBI
§1627a	AFMLS	(202) 514-1263	D.H.S. (Customs)
§1629(d)	AFMLS	(202) 514-1263	D.H.S. (Customs)
Except			
§1703(a)	AFMLS	(202) 514-1263	D.H.S. (Customs)
§§1706-1708	FRAUD	(202) 514-7023	D.H.S. (Customs)
	FRAUD	(202) 514-7023	D.H.S. (Customs)
	(forfeiture only)		
§1919	FRAUD	(202) 514-7023	FBI
	FRAUD	(202) 514-7023	FBI
§§2091-2095	AFMLS	(202) 514-1263	D.H.S. (Customs)
	(forfeiture only)		

§2093	FRAUD	(202) 514-7023	
§2316	FRAUD	(202) 514-7023	FBI
2349	FRAUD	(202) 514-7023	FBI

9-4.133 20 U.S.C.: Education

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§1097	FRAUD	(202) 514-7023	

9-4.134 21 U.S.C.: Food and Drugs

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§101-105	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
§§111-131	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
§134a-e	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
§135a	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
§§151-158	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
§§331-334	Office of Consumer Litigation (OCL) B187	(202) 307-3009	Food and Drug Administration (including FDA Office of Criminal Investigations)
§§458-461(b)	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
§461(c)	DSS	(202) 616-5731	

	(assault upon poultry inspectors)		
§§463-467	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
Except			
§467(b)	AFMLS (forfeiture only)	(202) 514-1263	Agriculture (Office of Investigations)
§§606-674	FRAUD	(202) 514-7023	Agriculture (Office of Investigations); FBI
§675	DSS (assault upon meat inspectors)	(202) 616-5731	
§676	FRAUD	(202) 514-7023	
Except			
§673	FRAUD (forfeiture only)	(202) 514-7023	Agriculture (Office of Investigations); FBI
§675	FRAUD	(202) 514-7023	Agriculture (Office of Investigations); FBI
§676	FRAUD	(202) 514-7023	Agriculture (Office of Investigations); FBI
§§801-971	NDDS	(202) 514-0917	D.E.A.; FBI
	AFMLS* (forfeiture only)	(202) 514-1263	D.E.A.; FBI
§801-878	FRAUD	(202) 514-7023	
§941 (b)	FRAUD	(202) 514-7023	
§952-953	FRAUD	(202) 514-7023	
Except			
§802(32)	NDDS**	(202) 514-0917	D.E.A.; FBI
§813	NDDS**	(202) 514-0917	D.E.A.; FBI
§841(a)(2)	NDDS*	(202) 514-0917	D.E.A.; FBI
§848	NDDS*	(202) 514-0917	D.E.A.; FBI
§849	NDDS*	(202) 514-0917	D.E.A.; FBI
§853	AFMLS*	(202) 514-1263	D.E.A.; FBI
§857	NDDS	(202) 514-0917	D.E.A.
§875	NDDS*	(202) 514-0917	Postal Service; D.E.A.
§881	AFMLS	(202) 514-1263	D.E.A.; FBI; Postal Service
§881(f)(2)	NDDS	(202) 514-0917	D.E.A.; Customs
§888	AFMLS	(202) 514-1263	D.E.A.; Customs
§967-969	OEO	(202) 514-6809	None

§1037	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
§1041(a), (b)	FRAUD	(202) 514-7023	Agriculture (Office of Investigations)
§1041(c)	DSS (assault upon egg inspectors)	(202) 616-5731	Agriculture (Office of Investigations)
§1049	FRAUD (forfeiture only)	(202) 514-7023	Agriculture (Office of Investigations)

9-4.135 22 U.S.C.: Foreign Relations and Intercourse

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§211a	FRAUD	(202) 514-7023	
§286f(b)	OEO	(202) 514-6809	FBI
§286f(c)	PIN	(202) 514-1412	FBI
§287c	CES**	(202) 514-1187	FBI
§401	CES (civil penalties)	(202) 514-1187	D.H.S. (Customs); State
	AFMLS (forfeiture only)	(202) 514-1263	D.H.S. (Customs); State
	CES	(202) 514-1187	D.H.S. (Customs); State
§455	CES**	(202) 514-1187	FBI
§§611-621	CES**	(202) 514-1187	FBI
§1623(e)-(f)	FRAUD	(202) 514-7023	Foreign Claims Settlement Comm.
§1631j-n	FRAUD	(202) 514-7023	FBI
§1641p	FRAUD	(202) 514-7023	Foreign Claims Settlement Comm.

§1642m	FRAUD	(202) 514-7023	Foreign Claims Comm.
§1643k	FRAUD	(202) 514-7023	Foreign Claims Settlement Comm
§1731	DSS	(202) 616-5731	State
	(protection to naturalized citizens abroad)		
§1732	DSS	(202) 616-5731	State
	(release of citizens imprisoned by foreign governments)		
§1978	AFMLS	(202) 514-1263	D.H.S. (Customs)
§2291(c)	NDDS	(202) 514-0917	State; Transportation
§2667	All		None
§2708	CTS	(202) 514-0849	State
	NDDS	(202) 514-0917	State
§2712(f)	CTS	(202) 514-0849	D.H.S. (Customs); FBI
§§2774-2777	CES	(202) 514-1187	D.H.S. (Customs);
§2778	CES**	(202) 514-1187	D.H.S. (Customs); State
§4199	PIN	(202) 514-1412	FBI
§4202	PIN	(202) 514-1412	FBI
§§4217-4218	PIN	(202) 514-1412	FBI
§4221	FRAUD	(202) 514-7023	FBI

9-4.137 24 U.S.C.: Hospitals and Asylums

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§154	OEO	(202) 514-6809	FBI

9-4.138 25 U.S.C.: Indians

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§202	OEO	(202) 514-6809	FBI
§251	OEO	(202) 514-6809	Interior
§399	OEO	(202) 514-6809	FBI
§450d	FRAUD	(202) 514-7023	FBI

9-4.139 26 U.S.C.: Internal Revenue Code

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§3121(b)17	CES	(202) 514-1187	Treasury
§§4181-4182	DSS	(202) 616-5731	DOJ (ATF)
§§4401-4405	OCRS	(202) 514-3595	Treasury; I.R.S.
§§4411-4414	OCRS	(202) 514-3595	Treasury; I.R.S.
§§4421-4423	OCRS	(202) 514-3595	Treasury; I.R.S.
§§5001-5687	OCRS	(202) 514-3595	DOJ (ATF)
Except			
§§5607-5608	AFMLS (forfeiture only)	(202) 514-1263	DOJ (ATF)
§§5612-5613	AFMLS	(202) 514-1263	DOJ (ATF)
§5615	AFMLS	(202) 514-1263	DOJ (ATF)
§5661(a)	AFMLS (forfeiture only)	(202) 514-1263	DOJ (ATF)

§5671	AFMLS (forfeiture only)	(202) 514-1263	DOJ (ATF)
§5673	AFMLS	(202) 514-1263	DOJ (ATF)
§5681(c)	AFMLS (forfeiture only)	(202) 514-1263	DOJ (ATF)
§5683	AFMLS (forfeiture only)	(202) 514-1263	DOJ (ATF)
§5685(c)	AFMLS (forfeiture only)	(202) 514-1263	DOJ (ATF)
§5688	AFMLS	(202) 514-1263	DOJ (ATF)
§5691	OCRS	(202) 514-3595	DOJ (ATF)
§5723(c)-(d)	FRAUD	(202) 514-7023	DOJ (ATF)
§5763	AFMLS	(202) 514-1263	DOJ (ATF)
§5801	DSS	(202) 616-5731	
§5802	DSS	(202) 616-5731	DOJ (ATF)
§5803	DSS	(202) 616-5731	
§5804	DSS	(202) 616-5731	
§§5811-5812	DSS	(202) 616-5731	DOJ (ATF)
§§5821-5822	DSS	(202) 616-5731	DOJ (ATF)
§§5841-5849	DSS	(202) 616-5731	DOJ (ATF)
§§5851-5854	DSS	(202) 616-5731	DOJ (ATF)
§5861	DSS	(202) 616-5731	DOJ (ATF)
§5871	DSS	(202) 616-5731	DOJ (ATF)
§5872(a)	AFMLS	(202) 514-1263	DOJ (ATF)
§6050I	AFMLS	(202) 514-1263	Treasury; I.R.S.
§6103	OEO**	(202) 514-6809	All DOJ Components
§7122	AFMLS	(202) 514-1263	DOJ (ATF)

Customs

	(statutes administered by Criminal Division)		Secret Service
§§7201-7209	All		I.R.S.
§7212	OEO	(202) 514-6809	FBI; I.R.S.
§7213	PIN*	(202) 514-1412	Treasury; I.R.S.
§7214	PIN	(202) 514-1412	FBI
§7262	OCRS	(202) 514-3595	Treasury; I.R.S.
§7272	FRAUD	(202) 514-7023	Treasury; I.R.S.
§7301-7303	AFMLS	(202) 514-1263	DOJ (ATF)
§§7321-7327	AFMLS	(202) 514-1263	DOJ (ATF)
§9012	PIN	(202) 514-1412	FBI; Federal Election Commission
§9042	PIN	(202) 514-1412	FBI; Federal Election Commission

9-4.141 27 U.S.C.: Intoxicating Liquor

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§205-207	OCRS	(202) 514-3595	DOJ (ATF)
Except			
§206	AFMLS (forfeiture only)	(202) 514-1263	DOJ (ATF)

9-4.142 28 U.S.C.: Judiciary and Judicial Procedure

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION

§455	All		None
§524(c)	AFMLS	(202) 514-1263	Related agency; D.E.A.; FBI; D.H.S.; U.S. Marshals Service; I.R.S.; Postal Service
§530C(b)(1)(L)	DSS	(202) 616-5731	(permanent authority for the AG to pay public rewards (**added 11/02/02**))
§540	DSS	(202) 616-5731	FBI (authority for FBI to investigate felonious killings of state or local law enforcement officials)
§540A	DSS	(202) 616-5731	FBI (authority for the FBI to investigate violent crimes against travelers)
§540B	DSS	(202) 616-5731	FBI (authority for FBI to investigate serial murders)
§§591-592	PIN	(202) 514-1412	FBI or other agency involved
§1355	AFMLS	(202) 514-1263	None
§1395	AFMLS	(202) 514-1263	None
§§991-998	OPL	(202) 514-3202 (202) 514-4182	None
§1746	FRAUD	(202) 514-7023	FBI
§§1781-1784	OIA	(202) 514-4676	None
§1822	All		None
§1826	OEO	(202) 514-6809	U.S. Marshals Service
§1875	OEO	(202) 514-6809	U.S. Marshals Service
§§2241-2250	FRAUD (Aliens) (All others)	(202) 514-7023	D.H.S.; Bureau of Prisons
§2253	FRAUD (Aliens) (All others)	(202) 514-7023	D.H.S.; Bureau of Prisons

§2255	All		None
§2461	AFMLS	(202) 514-1263	None
§2465	AFMLS	(202) 514-1263	None
§2514	AFMLS	(202) 514-1263	U.S. Claims Court
§2678	FRAUD	(202) 514-7023	FBI

9-4.143 28 U.S.C.: Appendix

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
F.R.E.	APP	(202) 514-3521	None

9-4.144 29 U.S.C.: Labor

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§162	OCRS(L)	(202) 514-3666	FBI
§186	OCRS(L)	(202) 514-3666	FBI; Labor (Office of Labor Racketeering per annual deputation of Sp. Dep. U.S. Marshals)
§§431-439	OCRS(L)	(202) 514-3666	Labor (Office of Labor Management Standards)
§§461 & 463	OCRS(L)	(202) 514-3666	Labor (Office of Labor Management Standards)
§501(c)	OCRS(L)	(202) 514-3666	FBI; Labor (Office of Labor Management Standards & Office of Labor Racketeering)
§502	OCRS(L)	(202) 514-3666	Labor (Office of Labor

			Management Standards)
§503(a)	OCRS(L)	(202) 514-3666	Labor (Office of Labor Management Standards)
§503(b)	OCRS(L)	(202) 514-3666	FBI (employers payments);Labor Ofc of Labor Management Standards) (union payments)
§504	OCRS(L)*	(202) 514-3666	FBI; Labor (Office of Labor Management Standards and Office of Racketeering on case-by-case basis)
§521	OCRS	(202) 514-3595	FBI
	OCRS(L)	(202) 514-3666	FBI; Labor (Office of Labor Management Standards and Office of Racketeering on case-by-case basis)
§522	OCRS(L)	(202) 514-3666	FBI
§528	OCRS(L)	(202) 514-3666	FBI
§530	OCRS(L)	(202) 514-3666	FBI; Labor (Office of Labor Racketeering on case-by-case basis)
§666(e)-(f)	FRAUD	(202) 514-7023	Occupational Safety and Health Administration
§666(g)	FRAUD	(202) 514-7023	FBI
	(When accompanying violation of (e)-(f))		
§1111	OCRS(L)*	(202) 514-3666	FBI; Labor (Pension and Welfare Benefits Administration and Office of Labor Racketeering
§1131	OCRS(L)	(202) 514-3666	Labor (Pension & Welfare Benefits Administration)
§1141	OCRS(L)	(202) 514-3666	FBI; Labor (Pension and Welfare Benefits Adm. and Office of

			Labor Racketeering)
§1851	FRAUD	(202) 514-7023	Labor

9-4.145 30 U.S.C.: Mineral Lands and Mining

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§184	AFMLS	(202) 514-1263	Interior
§689	FRAUD	(202) 514-7023	FBI
§§801-878	FRAUD	(202) 514-7023	Interior (MESA)
§933	FRAUD	(202) 514-7023	Interior (MESA)
§942	FRAUD	(202) 514-7023	Interior (MESA)
§1211(f)	PIN	(202) 514-1412	FBI
§1267(g)	PIN	(202) 514-1412	FBI
§1294	OCRS	(202) 514-3595	
§1463	FRAUD	(202) 514-7023	Commerce (National Oceanic and Atmospheric Admin.)
§1466	AFMLS	(202) 514-1263	Interior
§1720	FRAUD	(202) 514-7023	Interior

9-4.146 31 U.S.C.: Money and Finance

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§1341-1342	PIN	(202) 514-1412	FBI
§1350	PIN	(202) 514-1412	FBI

§1517	PIN	(202) 514-1412	FBI
§1519	PIN	(202) 514-1412	FBI
§5111	FRAUD	(202) 514-7023	D.H.S. (Secret Service)
Except			
§5111(d)(3)	AFMLS	(202) 514-1263	D.H.S. (Secret Service)
§§5311-5312	AFMLS	(202) 514-1263	Treasury
§§5313-5315	AFMLS	(202) 514-1263	D.H.S. (Customs)
	FRAUD	(202) 514-7023	D.H.S. (Customs)
§§5316-5317	AFMLS	(202) 514-1263	D.H.S. (Customs)
	FRAUD	(202) 514-7023	D.H.S. (Customs)
	OCRS (RICO prosecution only)	(202) 514-3595	FBI
§5317(c)	AFMLS*	(202) 514-1263	D.H.S. (Customs)
§5318(2)	FRAUD	(202) 514-7023	D.H.S. (Customs)
§5321(a)(1), (a)(3)	FRAUD	(202) 514-7023	FBI
	AFMLS	(202) 514-1263	FBI
§5321(a)(2)	FRAUD	(202) 514-7023	D.H.S. (Customs)
	AFMLS	(202) 514-1263	D.H.S. (Customs)
§5321(a)(4)	AFMLS	(202) 514-1263	D.H.S. (Customs)
§5322	FRAUD	(202) 514-7023	D.H.S. (Customs)
§5323	AFMLS	(202) 514-1263	D.H.S. (Customs)
§9703	AFMLS	(202) 514-1263	Treasury

9-4.147 33 U.S.C.: Navigation and Navigable Waters

STATUTE	**CRIMINAL DIVISION SECTION**	**TELEPHONE #**	**AGENCY WITH INVESTIGATIVE JURISDICTION**
§§1-3	FRAUD	(202) 514-7023	Defense

			(Army Corps of Engineers)
§§401-533	FRAUD	(202) 514-7023	Transportation; Defense
§473c-1	FRAUD	(202) 514-7023	
§473c-2	FRAUD	(202) 514-7023	
§482	FRAUD	(202) 514-7023	
§491	FRAUD	(202) 514-7023	
§496	FRAUD	(202) 514-7023	
§497	FRAUD	(202) 514-7023	
§499a-499r	FRAUD	(202) 514-7023	
§503	FRAUD	(202) 514-7023	
§505	FRAUD	(202) 514-7023	
§507	FRAUD	(202) 514-7023	
§511i	FRAUD	(202) 514-7023	
§511k	FRAUD	(202) 514-7023	
§521-526	FRAUD	(202) 514-7023	
§§554-555	FRAUD	(202) 514-7023	Defense (Army Corps of Engineers)
§601	FRAUD	(202) 514-7023	Defense (Army Corps of Engineers)
§682	FRAUD	(202) 514-7023	Interior (Solicitor's Office-Energy & Resources Division)
§928	FRAUD	(202) 514-7023	FBI
§931	FRAUD	(202) 514-7023	FBI
§937	FRAUD	(202) 514-7023	Labor (Solicitor's Office Employees' Benefit Division)
§938	FRAUD	(202) 514-7023	FBI
§941	FRAUD	(202) 514-7023	Labor
§990(a)-(c)	FRAUD	(202) 514-7023	FBI
§1227	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§1319(c)	FRAUD	(202) 514-7023	Agency Involved; F.B.I if major investigation is required

§1908	FRAUD	(202) 514-7023	D.H.S. (Coast Guard-contact local Coast Guard District Commander)

9-4.151 35 U.S.C.: Patents

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§33	FRAUD	(202) 514-7023	FBI
§§181-185	CES**	(202) 514-1187	FBI
§186	CCIPS	(202) 514-1026	FBI
§§187-188	CES**	(202) 514-1187	FBI
§289	FRAUD	(202) 514-7023	FBI
§292	FRAUD	(202) 514-7023	FBI

9-4.152 36 U.S.C.: Patriotic Societies and Observances

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§179-181	FRAUD	(202) 514-7023	FBI
§728	OEO	(202) 514-6809	FBI

9-4.154 38 U.S.C.: Veterans' Benefits

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION

§218	OEO	(202) 514-6809	VA Special Police; FBI
§787	FRAUD	(202) 514-7023	FBI
§1790	FRAUD	(202) 514-7023	FBI
§3313	FRAUD	(202) 514-7023	FBI
§3405	FRAUD	(202) 514-7023	FBI
§§3501-3502	FRAUD	(202) 514-7023	FBI
§5701	PIN	(202) 514-1412	FBI

9-4.155 39 U.S.C.: Postal Service

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§606	AFMLS	(202) 514-1263	U.S.P.S. (Postal Inspection Service)
§3001	OEO	(202) 514-6809	U.S.P.S. (Postal Inspection Service)
§3005	FRAUD	(202) 514-7023	U.S.P.S. (Postal Inspection Service)
§3008	CEOS	(202) 514-5780	U.S.P.S. (Postal Inspection Service)
§§3010-3011	CEOS	(202) 514-5780	U.S.P.S. (Postal Inspection Service)

9-4.156 40 U.S.C.: Public Buildings, Property, and Works

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§13f-p	OEO	(202) 514-6809	Marshal of Supreme Court

§56	OEO	(202) 514-6809	FBI
§101	OEO	(202) 514-6809	Federal Police Forces
§193b-h, n-s	OEO	(202) 514-6809	Capitol Police; Special Police; U.S. Park Police
§212a	OEO	(202) 514-6809	Capitol Police
§212b	OEO	(202) 514-6809	Capitol Police
§255	OEO	(202) 514-6809	None
§276a	FRAUD	(202) 514-7023	Labor; FBI
§318a-c	OEO	(202) 514-6809	FBI
§318d	OEO	(202) 514-6809	G.S.A.
§328	FRAUD	(202) 514-7023	Labor; FBI
§332	FRAUD	(202) 514-7023	Labor; FBI
§883	OEO	(202) 514-6809	Labor; FBI

9-4.157 40 U S.C.: Appendix

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§402	FRAUD	(202) 514-7023	Labor; FBI

9-4.158 41 U.S.C.: Public Contracts

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§35-36	FRAUD	(202) 514-7023	FBI
§51	FRAUD	(202) 514-7023	FBI

§54	FRAUD	(202) 514-7023	FBI
§119	FRAUD	(202) 514-7023	FBI

9-4.159 42 U.S.C.: The Public Health and Welfare

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§261(b)-(c)	OEO	(202) 514-6809	FBI
§262	FRAUD	(202) 514-7023	H.H.S.
§263a	FRAUD	(202) 514-7023	H.H.S.
§§264-272	FRAUD	(202) 514-7023	H.H.S.
§274(e)	OEO	(202) 514-6809	FBI
§406	FRAUD	(202) 514-7023	H.H.S.
§408	FRAUD	(202) 514-7023	H.H.S.
§410(a)(17)	CES	(202) 514-1187	H.H.S.
§§1306-1307	FRAUD	(202) 514-7023	H.H.S.
§1320c-9	PIN	(202) 514-1412	FBI
§1395nn	FRAUD	(202) 514-7023	H.H.S.
§1396h	FRAUD	(202) 514-7023	H.H.S.
§1973i(c)	PIN*	(202) 514-1412	FBI
§1973i(e)	PIN*	(202) 514-1412	FBI
§2000aa (except as assigned to CCIPS)	OEO	(202) 514-6809	No Offense
§2000aa (for electronic evidence)	CCIPS	(202) 514-1026	No Offense
§2271	FRAUD	(202) 514-7023	FBI
§§2272-2273	FRAUD	(202) 514-7023	FBI

§§2274-2278	CES**	(202) 514-1187	FBI
§2278a	OEO	(202) 514-6809	FBI
§2278b	CES	(202) 514-1187	FBI
§2280	FRAUD	(202) 514-7023	FBI
§2281	OEO	(202) 514-6809	FBI
§2282	FRAUD	(202) 514-7023	FBI
§2283	CTS	(202) 514-0849	FBI
§2284	CTS** (Violations undertaken on behalf of a foreign government) (consult ENRD where there are environmental concerns)	(202) 514-1187	FBI
§3220(a)-(b)	FRAUD	(202) 514-7023	FBI
§3222	FRAUD	(202) 514-7023	Labor
§3425	OEO	(202) 514-6809	FBI
§3771	PIN	(202) 514-1412	FBI
§§3791-3793	FRAUD	(202) 514-7023	FBI
§§3795-3795b	FRAUD	(202) 514-7023	FBI
§5157	FRAUD	(202) 514-7023	FBI
§§5410(b)-5420	FRAUD	(202) 514-7023	FBI
§7413	FRAUD	(202) 514-7023	FBI
§§8431-8435	FRAUD	(202) 514-7023	FBI

9-4.161 43 U.S.C.: Public Lands

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION

§104	OEO	(202) 514-6809	FBI
§315a	OEO	(202) 514-6809	FBI
§316k	OEO	(202) 514-6809	FBI
§362	OEO	(202) 514-6809	FBI
§§1061-1062	OEO	(202) 514-6809	FBI
§1063	CTS	(202) 514-0849	FBI
§1212	FRAUD	(202) 514-7023	FBI
§§1331-1343	FRAUD	(202) 514-7023	Labor (MSHA)
§1605(b)	PIN	(202) 514-1412	FBI
§1619(f)(2)	FRAUD	(202) 514-7023	FBI

9-4.163 45 U.S.C.: Railroads

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§1-18	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§13	FRAUD	(202) 514-7023	
§23	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§§28-29	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§32	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§34	FRAUD	(202) 514-7023	Transportation

§§38-39	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§60	FRAUD	(202) 514-7023	FBI
§§62-63	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§64a(a)	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§§65-66	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§§71-73	FRAUD	(202) 514-7023	Agriculture (Off. of Investigations)
§81	FRAUD	(202) 514-7023	Treasury (Fiscal Service)
§83	FRAUD	(202) 514-7023	None
§152, Tenth	OCRS(L)*	(202) 514-3666	FBI; Labor (Office of Labor Racketeering per annual deputation as Sp. Dep. U.S. Marshals)
§231l	FRAUD	(202) 514-7023	FBI
§355(i)	FRAUD	(202) 514-7023	FBI
§359	FRAUD	(202) 514-7023	FBI
§438	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)
§546(b)	FRAUD	(202) 514-7023	Transportation (Federal Railway Admin.)

9-4.164 46 U.S.C.: Shipping

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§2106-2107	OEO	(202) 514-6809	D.H.S. (Coast Guard)
§2302	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§2304	OEO	(202) 514-6809	D.H.S. (Coast Guard)
§3305	FRAUD	(202) 514-7023	Transportation
§3306(a)(5)	FRAUD	(202) 514-7023	Transportation
§3318	FRAUD	(202) 514-7023	FBI
§3501	FRAUD	(202) 514-7023	Transportation
§3713	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§3718	FRAUD	(202) 514-7023	Transportation
§4307	FRAUD	(202) 514-7023	Transportation
§4311	FRAUD	(202) 514-7023	Transportation
§6306	FRAUD	(202) 514-7023	FBI
§7101	FRAUD	(202) 514-7023	FBI
§7106	FRAUD	(202) 514-7023	FBI
§7703	FRAUD	(202) 514-7023	FBI
§8102	FRAUD	(202) 514-7023	FBI
§8302	FRAUD	(202) 514-7023	FBI
§8903	FRAUD	(202) 514-7023	Transportation
§8905	FRAUD	(202) 514-7023	Transportation

§10314-16	FRAUD	(202) 514-7023	FBI
§§10505-10506	FRAUD	(202) 514-7023	FBI
§11501	FRAUD	(202) 514-7023	Transportation
§11504	AFMLS	(202) 514-1263	Transportation
§12122	AFMLS	(202) 514-1263	Transportation
§12309	FRAUD	(202) 514-7023	Transportation
§12309(a)	FRAUD	(202) 514-7023	Transportation

9-4.165 46 U.S.C. Appendix: Shipping

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§41	AFMLS	(202) 514-1263	FBI
§§58-59	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§§142-143	FRAUD	(202) 514-7023	D.H.S. (Customs)
§292	AFMLS	(202) 514-1263	D.H.S. (Coast Guard)
§325	AFMLS	(202) 514-1263	FBI
§676	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§738	FRAUD	(202) 514-7023	D.H.S. (Coast Guard)
§§801-842	FRAUD	(202) 514-7023	Federal Maritime Comm.
Except			
§808	AFMLS (forfeiture only)	(202) 514-1263	Transportation

§835	AFMLS (forfeiture only)	(202) 514-1263	Transportation
§883	AFMLS (forfeiture only)	(202) 514-1263	Transportation
§883-1	AFMLS (forfeiture only)	(202) 514-1263	Transportation
§883a	AFMLS (forfeiture only)	(202) 514-1263	Transportation
§1225	CES*	(202) 514-1187	FBI
§1295f(d)	FRAUD	(202) 514-7023	Transportation (Maritime Admin.)
§§1901-1904	NDDS	(202) 514-0917	D.H.S. (Coast Guard)

9-4.166 47 U.S.C.: Telegraphs, Telephones, and Radiotelegraphs

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§13	FRAUD	(202) 514-7023	F.C.C.
§§21-34	FRAUD	(202) 514-7023	F.C.C.
§33	FRAUD	(202) 514-7023	
§37	FRAUD	(202) 514-7023	F.C.C.
§220(e)	FRAUD	(202) 514-7023	F.C.C.
§223	CCIPS	(202) 514-6809	FBI
	CEOS* (minors only)	(202) 514-5780	FBI
§§301-416	FRAUD	(202) 514-7023	F.C.C.
§§501-503	FRAUD	(202) 514-7023	F.C.C.
§§507-508	FRAUD	(202) 514-7023	F.C.C.
§510	AFMLS	(202) 514-1263	F.C.C.
§553	FRAUD	(202) 514-7023	FBI

§559	OEO	(202) 514-6809	FBI
§605	CCIPS	(202) 514-1026	FBI
§606	CTS	(202) 514-0849	F.C.C.; Defense; G.S.A

9-4.168 49 U.S.C.: Transportation

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§527-528	FRAUD	(202) 514-7023	Transportation
§11109	FRAUD	(202) 514-7023	I.C.C.
§§11901-11904	FRAUD	(202) 514-7023	I.C.C.
Except			
§11902a	FRAUD OCRS(L) (labor dispute)	(202) 514-7023 (202) 514-3666	I.C.C. I.C.C.
§§11906-11907	FRAUD	(202) 514-7023	I.C.C.
§§11909-11910	FRAUD	(202) 514-7023	I.C.C.
§§11912-11916	FRAUD	(202) 514-7023	I.C.C.
§46104	FRAUD	(202) 514-7023	F.A.A.; I.C.C.
§46314	CTS	(202) 514-0849	FBI
§46306(d)	AFMLS	(202) 514-1263	DEA;D.H.S. (Customs)
§§46501-46507	CTS	(202) 514-0849	FBI
§§60122-60123	FRAUD	(202) 514-0849	F.A.A.; I.C.C.

§60123(b)	CTS	(202) 514-0849	FBI
§80303	AFMLS	(202) 514-1263	DEA;D.H.S. (Customs)

9-4.169 49 U.S.C. Appendix: Transportation

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§1522-1523	CES	(202) 514-1187	F.A.A.
§2214	FRAUD	(202) 514-7023	FBI
§2216	FRAUD	(202) 514-7023	FBI
§80501	CTS	(202) 514-0849	FBI

9-4.170 50 U.S.C.: War and National Defense

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§§21-24	CES**	(202) 514-1187	FBI
§167k	FRAUD	(202) 514-7023	Interior
§§191-192	CES**	(202) 514-1187	D.H.S. (Coast Guard)
§217	PIN	(202) 514-1412	FBI
§403(h)	NDDS	(202) 514-0917	DEA
§421	CES**	(202) 514-1187	FBI
§§422-426	CES	(202) 514-1187	FBI
§781	CES*	(202) 514-1187	FBI
§§782-798	CES	(202) 514-1187	FBI

§§841-844	CES**	(202) 514-1187	FBI
§§851-857	CES**	(202) 514-1187	FBI
§§1701-1706	CES**	(202) 514-1187	D.H.S. (Customs)
§1809	CCIPS	(202) 514-1026	None
§§2401-2404	CES**	(202) 514-1187	FBI

9-4.171 50 U.S.C.: Appendix

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
§3	FRAUD**	(202) 514-7023	Treasury
§5	OEO	(202) 514-6809	D.H.S. (Customs)
§5(b)	CES**	(202) 514-1187	Treasury
§12	AFMLS (forfeiture only)	(202) 514-1263	Treasury
§16	CES** AFMLS (forfeiture only)	(202) 514-1187 (202) 514-1263	Treasury Treasury
§462	OEO*	(202) 514-6809	FBI
§473	OCRS	(202) 514-3595	DOJ (ATF)
§510	OEO	(202) 514-6809	Defense; FBI
§513	OEO	(202) 514-6809	Defense
§520	OEO	(202) 514-6809	Defense
§§530-532	OEO	(202) 514-6809	Defense
§§534-535	OEO	(202) 514-6809	Defense
§1941d(b)	PIN	(202) 514-1412	FBI
§1985	FRAUD	(202) 514-7023	None

§2009	FRAUD	(202) 514-7023	None
§2017m	FRAUD	(202) 514-7023	None
§2071	FRAUD	(202) 514-7023	Commerce
§2073	FRAUD	(202) 514-7023	Commerce
§2155(d)	FRAUD	(202) 514-7023	FBI
§2155(e)	PIN	(202) 514-1412	FBI
§2166	FRAUD	(202) 514-7023	None
§§2401-2420	CES**	(202) 514-1187	D.H.S. (Customs); Commerce
Except			
§2410(c)	CES	(202) 514-1187	FBI
§2410(g)	AFMLS (forfeiture only)	202) 514-1263	FBI

9-4.172 Uncodified

STATUTE	CRIMINAL DIVISION SECTION	TELEPHONE #	AGENCY WITH INVESTIGATIVE JURISDICTION
76 Stat. 907	FRAUD	(202) 514-7023	FBI

9-4.173 Repealed/Reclassified

7 U.S.C.: Agriculture

§86

§87b(a)(8)

§473

§516-517

§952

§2803-2804

8 U.S.C.: Aliens and Nationality

§1182(a)(28)

18 U.S.C.: Crimes and Criminal Procedure

§1514

§1714

§1718

26 U.S.C.: Internal Revenue Code

§7213

§7601

29 U.S.C.: Labor

§629

31 U.S.C.: Money and Finance

§3721

36 U.S.C.: Patriotic Societies and Observances

§379

39 U.S.C.: Postal Service

§212(a)

§212(b)

46 U.S.C.: Shipping

§57

§277

§316

§319

§1171(b)

§1223

§1224

§1226

§1276

49 U.S.C.: Transportation

§1159

§1484(d)

§1679a

§1809

50 U.S.C.: War and National Defense

§2284

Uncodified:

5 Canal

22 D.C.

9-4.200 Legislative Histories

Legislative Histories of statutes assigned to the Criminal Division are compiled and maintained by the Legislative History and Gambling Devices Unit, Office of Enforcement Operations. Research requests should be made to this office by calling (202) 514-1333. When requesting research of a specific legislative history, the United States Code cite must be provided. Considerable time will be saved by referring to the Public Law using the list found in the Criminal Resource Manual at 24. This list includes the legislative history of each statute assigned to the Criminal Division since 1946 and many enacted prior thereto.

Two Political Jurisdictions: "National" government v. "Federal/General" government"

Related references/articles:

- National vs. Federal government compared
- "State"-defined
- "United States"-defined
- "de facto"-defined
- "de jure"-defined
- Separation of Powers Doctrine-described
- Separation of Powers-defined
- Federalist paper #39: The Conformity of the Plan to Republican Principles

Many people are blissfully unaware that there are actually *two* mutually exclusive political jurisdictions within United States the country. Your citizenship status determines which of the two political jurisdictions you are a member of and you have an option to adopt either. This book describes how to regain the model on the right, the "Federal government", which we also call the "United States of America" throughout this book. We have prepared a table to compare the two and explain what we mean. The vast majority of Americans fall under the model on the left, and their own ignorance, fear, and apathy has put them there. The model on the left treats the everyone as part of the federal corporation called the "United States" the *federal corporation*, which is how the law defines it in 28 U.S.C. §3002(15)(A). This area is also called "the federal zone" throughout this book. The "United States" first became a federal corporation in 1871 and you can read this law for yourself right from the Statutes at Large:

http://famguardian.org/Subjects/Taxes/16Amend/SpecialLaw/DCCorpStatuesAtLarge.pdf

Table 1: Two Political Jurisdictions within our Country

TWO POLITICAL JURISDICTIONS WITHIN OUR COUNTRY		
Characteristic	***"National government"***	***"Federal/general government"***
Also called	"United States" the Corporation	"United States of America"
Geographical territory	Federal zone	50 states of the Union
God that is worshipped: See Matt. 6:24	Mammon/man/government (Satan) Idolatry One nation under "fraud"	God One nation under "God"
Freedom and liberty	Counterfeit, man-made freedom. Freedom granted not by God, but by the government. "*Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with His wrath?*" [Thomas Jefferson: Notes on Virginia Q.XVIII, 1782. ME 2:227]	Liberty direct from God Himself: "***Where the spirit of the Lord is, there is Liberty.***" 2 Corinthians 3:17 (Bible)

Religious foundation	This ***government/state is god***. It sets the morals and values of those in its jurisdiction. These value are ever changing at their whim.	Sovereign Citizens are created by God and are answerable to their Maker who is Omnipotent. The Bible is the Basis of all Law and moral standards. In 1820, the USA government purchased 20,000 bibles for distribution.
Sovereign to whom citizens owe "allegiance"	Government ***"Allegiance.*** *Obligation of* ***fidelity and obedience to government*** *in consideration for protection that government gives. U.S. v. Kyh, D.C.N.Y., 49 F.Supp 407, 414. See also Oath of allegiance or loyalty." [Black's Law Dictionary, Sixth Edition, p. 74]*	"state", which is the collection of *individual* sovereigns within a republican form of government. The People, as individuals, are the "sovereigns": *"The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. Through the medium of their Legislature they may exercise all the powers which previous to the Revolution could have been exercised either by the King alone, or by him in conjunction with his Parliament; subject only to those restrictions which have been imposed by the Constitution of this State or of the U.S." [Lansing v. Smith, 21 D. 89., 4 Wendel 9 (1829) (New York)]*
Source of law	"The state", which is mob rule living under a democracy rather than a republic. "***You shall not follow a crowd to do evil****; nor shall you testify in a dispute so as to turn aside after many to pervert justice." [Exodus 23:2, Bible, NKJV]*	God, as revealed in the Bible/ten commandments. The sovereign People as individuals, to the extent that they are implementing God's law, and within the limits prescribed by the Bill of Rights and the Equal rights of others. (See book *Biblical Institutes of Law*, by Rousas Rushdoony)
Purpose of law	Protect rulers in government from the irate "serfs" and tax "slaves" that they govern and from the inevitable consequences of their tyranny and abuse	Protect sovereign people from tyranny in government and from hurting each other
Political hierarchy (lower number has higher precedence)	1. Ruler/king (supersedes God) 2. Legislature 3. Laws 4. Subjects/citizens (slaves/serfs of the state) NO GOD. Atheist or anti-spiritual (remove prayer from schools, because belief in God threatens government authority).	1. God 2. World 3. Man 4. "We the people" 5. Grand jury, Elections, Trial jury 6. U.S. Constitution 7. Human government & organized church
Political system	***Municipal corporation*** ***Totalitarian Socialist democracy*** "***Socialism***: **1.** any of various economic and political theories advocating collective or governmental ownership and administration of the means of production and distribution of goods. **2 a:** a system of society or group living in which there is no private property **b:** a system or condition of society in which the means of production are owned and controlled by the state **3: a** stage of society in Marxist theory transitional between capitalism and communism and distinguished by unequal distribution of goods and pay according to work done." [Merriam Webster's Ninth New Collegiate Dictionary, ISBN 0-97779-508-8, 1983] "*Democracy has never been and never can be so desirable as aristocracy or monarchy, but while it lasts, is more bloody than either. Remember, democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy that never did commit suicide.*" [John Adams, 1815]	***Republic*** "*Republic*: A commonwealth; that form of government which the administration of affairs is open to all the citizens. In another sense, it signifies the state, independently of its form of government." (Black's Law Dictionary, Sixth Edition, page 1302) "*Commonwealth*: The public or common weal or welfare… It generally designates, when so employed, a republican frame of government, one in which the welfare and rights of the entire mass of people are the main consideration, rather than the privileges of a class or the will of a monarch; or it may designate the body of citizens living under such a government." (Black's Law Dictionary, Sixth Edition, page 278)

Status	U.S. continues to be in a permanent state of national emergency since March 9, 1933, and possible as far back as the Civil War. See Senate report 93-549.	No state of Emergency and is not at war.
Pledge	"I pledge allegiance to the IRS, and to the tyrannical totalitarian oligarchy for which is stands. One nation, under fraud, indivisible, with slavery, injustice, and atheism for all."	"I pledge allegiance to the united states of America, and to the ***Republic*** for which is stands, one nation, ***under God***, indivisible, with liberty and justice for all."
Form of government	De facto (unlawful) (See our article entitled "How Scoundrels Corrupted Our Republican Form of Government" for details on how our government was rendered unlawful)	De jure (lawful)
Constitution	Constitution of the "United States" (See http://www.access.gpo.gov/congress)	Constitution of the "United States of America" (See http://www.access.gpo.gov/congress)
Creator	Merchants, bankers through President Lincoln and his Cohorts by act of treason. This martial law government is a fiction managing civil affairs	Created by God and sovereign Citizens acting under His delegated authority (see Gen. 1:26 and Gen. 2:15-17 in the Bible)
Origins	Gettysburg Address in 1864 and the Incorporation of District of Columbia by Act of February 21, 1871 under the Emergency War Powers Act and the Reconstruction Act	Started with the Declaration of Independence n 1776, Articles of Confederation in 1778, and the Constitution in 1787
Existence	Still existing as long as: 1. "state of war" or "emergency" exists. 2. The President does not terminate "martial" or "emergency" powers by Executive Order or decree, or 3. The people do not resist submission and terminate by restoring lawful civil courts, processes and procedures under authority of the "inherent political powers" of the people.	Adjournment of Congress sine die occurred in 1861
Governing body	The President (Caesar) rules by Executive Order (Unconstitutional). Congress and the Courts are under the President as branches of the Executive Department. Congress sits by resolution not by positive law. The Judges are actually administrative referees and cannot rule on rights.	"We the People", who rule themselves through their *servant* elected representatives. See Lincoln's Gettysburg Address, in which he said: "*A government of the people, for the people, and by the people*" Three separate Departments for the *servants*: 1. Executive. 2. Legislative-can enact *positive law*. 3. Judicial
Citizenship	"**U.S. citizen**" (Chattel Property of the government) are belligerents in the field and are "subject to its jurisdiction" (Washington, D.C.) 14th Amendment citizens, implemented by the Civil Rights Act of 1866 for the newly freed slaves (are now the slaves of the corporate government plantation) (See 8 U.S.C. 1401(a) at http://www4.law.cornell.edu/uscode/8/1401.html)	**"national"** is "sovereign", "Freemen", and "Freeborn". Unless that right is given up knowingly, intentionally, and voluntarily. "National of the United States of America" (see 8 U.S.C. 1101(a)(22)(B) at http://www4.law.cornell.edu/uscode/8/1101.html)

Implications of citizenship	**"U.S. citizens"** were declared **enemies** of the U.S. by F.D.R. by Executive Order No. 2040 and ratified by Congress on March 9, 1933. FDR changed the meaning of The Trading with the Enemy Act of December 6, 1917 by changing the word "**without**" to citizens "**within**" the United States	"**nationals**" are Sovereign citizens who supercede the U.S. Government is the enemy of liberty and should be kept as small as practical. *"Government big enough to supply everything you need is big enough to take everything you have. The course of history shows that as a government grows, liberty decreases." Thomas Jefferson*
Jurisdiction	Expands and conquers by deceit and fraud. Uses "words of art" to deceive the people.	Restricted by the Constitution to the 10 mile square area called Washington D.C., U.S. possessions, such as Puerto Rico, Guam, and its enclaves for forts and arsenals.
Civic duties-qualifications for	Must be a "citizen of the United States" to vote or serve jury duty	Must clarify citizenship when registering to vote and serving jury duty. In some states, cannot vote or serve jury duty
Vote	Is recommendation only.	Counts like one of the Board of Directors.
Rights and privileges	Inalienable rights. Rights from the corporate government. Statutory taxable "privileges" "Invisible contract" with federal government to "buy" (bribe into existence) these statutory privileges through taxes. See 48 U.S.C. §1421b: Statutory Bill of Rights. "The privileges and immunities clause of the 14th Amendment protects very few rights because it **neither** incorporates the Bill of Rights **nor** protects all rights of individual citizens. Instead, this provision protects **only** those rights **peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship**." *Jones v. Temmer* 829 F. Supp. 1226 (Emphasis added.)	Unalienable Rights. Rights from God. Constitutional rights-cannot be taxed
Value of the individual	**Bond Servant** To cover the debt in 1933 and future debt, the corporate government determined and established the value of the future labor of each individual in its jurisdiction to be $630,000. A bond of $630,000 is set on each Certificate of Live Birth. The certificates are bundled together into sets and then placed as securities on the open market. These certificates are then purchased by the Federal Reserve and/or foreign bankers. The purchaser is the "holder" of "Title." This process made each and every person in this jurisdiction a bond servant.	**Freeborn** Freeman Freeholder Sovereign "We the people..."
Welfare/social security	**YES**: Socialism-allowed and encouraged	**NO**: Not allowed. Everyone takes care of themselves
FAMILY		
Purpose of sex	Recreation and sin. When children result from such sin, then abortion (murder) frees sexual perverts and fornicators from the consequences of or liability for such sin and maintains their quality of life. Permissiveness by government of abortion becomes a license to sin without consequence.	Procreation. Gen. 1:22: "*And God blessed them, saying, "**Be fruitful and multiply**, and fill the waters in the seas, and let birds multiply on the earth.*" Psalms 127: 4-5: "***Like arrows in the hand of a warrior, So are the children of one's youth. Happy is the man who has his quiver full of them;*** *They shall not be ashamed, But shall speak with their enemies in the gate.*"

Purpose of marriage	An extension of the "welfare state" that financially enslaves men to the state and their wives and thereby undermines male sovereignty in the family. Prov. 31:3 says: "*Do not give your strength [or sovereignty] to women, nor your ways to that which destroys kings.*"	To make families self-governing by creating a chain of authority within them (see Eph. 5:22-24). Honor God and produce godly offspring. (Malachi 2:15)
Birth certificate	**Birth Certificate** when the baby's footprint is placed thereon before it touches the land. The certificate is recorded at a County Recorder, then sent to a Secretary of State which sends it to the Bureau of Census of the Commerce Department. This process converts a man's life, labor, and property to **an asset** of the US government when this person receives a benefit from the government such as a drivers license, food stamps, free mail delivery, etc. This person becomes a ***fictional persona*** **in commerce**. The Birth Certificate is an unrevealed "**Trust Instrument**" originally designed for the children of the newly freed black slaves after the 14th Amendment. The US has the ability to tax and regulate commerce EVERYWHERE.	
Education of young	Public schooling (brain washing of the young). School vouchers not allowed. This is a central plank in the Communist Manifesto. Purpose is to create better state "serfs".	Private schooling and school vouchers. Prayer permitted in schools.
STATES		
The word "State"	In U.S. Titles and Codes "State" refers to U.S. possessions such as Puerto Rico, Guam, etc.	"state" when used by itself refers to the "Republics" of The united states of America
State governments	Politicians of each state formed a new government and incorporated it into the federal US government corporation and are therefore under its jurisdiction. e.g. "State of California" corporate California California State	All of the states are "**Republics**" e.g. "The Republic of California" "California republic" "California state" or just "California"
Origins of the states	The corporate States are controlled by the corporate US government by its purse strings such as grants, funding, matching funds, revenue sharing, disaster relief, etc. The citizens of such States are "subjects" and are called "**Residents**"	**Sovereign Citizens** created the states (Republics) and are Sovereign over the states. The Republics and the people created the USA government and are sovereign over the USA government.
State constitution	The original constitution was revised and adopted by the corporate State of California on May 7, 1879 It has been revised many times hence.	California was admitted into the union as a Republic on September 9, 1850. The people created the original state constitution to give the government limited powers and to act on behalf of, and for the people. Called The "Organic" state constitution.
Rights of citizens in state	A one word change in the original State (California) constitution from "unalienable" to "inalienable" made rights into privileges *"Inalienable" means government given rights. "Unalienable" means God given rights.*	Adjournment ***sine die*** occurred in California in April 27, 1863
JUSTICE SYSTEM		
Judicial function	Judicial Branch under the President	Judicial Department
Separation of powers	It is not separate, but is an arm of the legislature	Separate from all other Departments
Purpose of federal courts	Maximize power and control and revenues of federal government	Protect the Constitutional rights of persons domiciled in states of the Union
Constitutional authority for federal courts	Article I, II, and IV ("U.S. District Courts" and "Tax Court")	Article III ("district courts of the United States" in the District of Columbia, Hawaii, and the Court of Claims)

Venue	federal (***feudal***) venue	***judicial*** venue
Courts	**Corporate Administrative Arbitration Boards** Consisting of an Arbitrator (so-called "Judge") and a panel of corporate employees (so-called "Juries") Panel decisions (recommendation) can be reversed by the Arbitrator	**Constitutional Judicial Courts** with real Judges and real Juries who can judge the law as well as the facts Jury decisions cannot be reversed by the judge
Type of courts	Equity Courts, Municipal Courts--Merchant Law, Military Law, Marshall Law, Summary Court Martial proceedings, and administrative ***ad hock*** tribunals (similar to Admiralty/Maritime) now governed by "The Manual of Courts Martial (under Acts of War) and the War Powers Act of 1933.	**Common Law Court**(s)
Trials	All legal actions are pursued under the "**color of law**" Color of law means "appears to be" law, but is not	The **7th Amendment** guarantees a trial by jury according to the rules of the common law when the value in controversy exceeds $20
Requirements of law	Covers a vast number of volumes of text that even attorneys can't absorb or comprehend such as: 1. Regulations 2. Codes 3. Rules 4. Statutes Prior to bankruptcy of 1933 "**Public Law**" Now the so-called courts administer "**Public Policy**" through the "**Uniform Commercial Code**" (instituted in 1967)	**Common Law** Has two requirements: Do not Offend Anyone Honor all contracts
Basis of judicial decisions	No ***stare decisis*** Means no precedent binds any court, because they have no law standard of absolute right and wrong by which to measure a ruling—what is legal today may not be legal tomorrow. So-called "court decisions" are administrative opinions only and are basically decided on the basis of "What is best for the corporate government."	**Constitution** Supreme Law of the land restricting governments. The "organic" Constitution and its amendments are created by the Sovereign living souls (We the people...") to institute, restrict, and restrain a limited government.
Nature of acts regulated	**Legal** or Illegal	**Lawful** or Unlawful
Lingo	"**at Law**" "Attorney at law"	"**in-Law**" (i.e. "Son-in-law" or a "covenant in law")
Legal Counsel	**Attorney** an **"Esquire"** (British nobility) Attorney-at-law (licensed agents of the corporate administrative courts and tribunals in the US for the Crown of England) Attorneys swear an oath to uphold the "BAR ASSOCIATION". The first letter of B.A.R stands for "British". (British Accreditation Regency) The BAR was First organized in Mississippi in 1825. The *"integrated bar"* movement, meaning "the condition precedent to the right to practice law," was initiated in the US in 1914 by the American Jurisprudence Society. --Black's Law Dictionary, 4th edition	**Counsel** or "Counselor in-Law" (Lawyer)
Claims	"Charge" or "Complaint" (administrative jurisdiction)	"**Claim**" (equity/common law jurisdiction)
Plaintiff/damaged party.	Compels performance No damaged party is necessary.	Must have **damaged party**
Court proceeding	"Public"	"**Private**

Rights under justice system	No rights except statutory Civil Rights granted by Congress. Restricts freedoms and liberties.	Maintains rights, freedoms, and liberties
Role of courts	US citizens are at the mercy of government and the administrative courts and tribunals Servants (subjects/ bond-servants) cannot sue the Master (Corporate government).	Unalienable rights, fundamental rights, substantial rights and other rights of living souls are all protected by The Law and protected by The "organic" Constitution and its amendments.
Bill of rights	The actual "Bill of Rights" was a declaration in 1689 by King William and Queen Mary to their loyal subjects of the British crown. If you are in this jurisdiction, you are a subject of the crown as well?	The first ten articles of **amendment to the constitution** are sometimes referred to as "**Bill of Rights**" which is incorrect. They are not a "Bill" but are simply amendments.
Due process	Due Process is optional--Sometimes Gestapo-like tactics without reservation.	**Due Process** is required Writ of **habeas corpus**
Innocence before the law	*Guilty until proven innocent*	***Innocent*** *until proven guilty*
Juries	The juror judges only the facts and not the law--The judge gives the statute, regulation, code, rule, etc. Juries selected ONLY from within the federal zone	Jurors judge the law ***as well as*** the facts. Juries selected ONLY from within states of the Union and NOT the federal zone.
DEBT		
Bankruptcy	First **bankruptcy** was in 1863 In 1865 the total debt was $2,682,593,026.53 A portion was funded by **1040 Bonds** to run not less than 10 nor more than 40 years at an interest rate of 6% Members of Congress are the official **Trustees** in the bankruptcy of the US and the re-organization	None
Income tax revenues necessary to pay debt	"All individual Income Tax revenues are gone before one nickel is spent on services taxpayers expect from government" --Ronald Reagan, 1984 Grace Commission Report	Wouldn't it be nice to be completely out of debt, personally, and have a stash of gold and silver besides?
TAXATION		
Federal income taxes	1. Illegally enforced. Government lies to citizens to steal their money. Corruption in the court. 2. States destroy personal liberties to get their share of federal matching funds. Example: Requirement to provide SSN to get a state driver's license.	Federal government has very limited income from only taxing foreign imports into states. Can't twist state's arm to destroy civic rights because it has so little income it won't give it away.
State income taxes	Treated as a "nonresident" of your state living on federal property (See, for example: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=rtc&group=17001-18000&file=17001-17039.1 and look at 17016 and 17018 off the California website at http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=rtc&codebody=&hits=20)	Treated as a resident of your state and not taxed because it would violate the Bill of Rights and 1:9:4 and 1:2:3 of the U. S. Constitution.
Personal Income tax rates (State plus Federal)	High: 50-70% because working is a "privilege" and because it is a "privilege" to be part of the "commune".	None: Working is a "right"
Limits	No limit on taxation	Limits on taxation
Purpose of Taxation	1. Wealth redistribution (socialism) and to appease the whims of the democratic majority in spiteful disregard of the Bill of Rights. 2. Stabilize fiat currency system	Support *only* the government and not the people in any way. See *Loan Assoc. v. Topeka*, 87 U.S. (20 Wall.) 655 (1874)
Income taxes	Income taxes are legal and ever increasing	Direct taxes such as "**Income taxes**" are **unlawful**
Indirect taxes	Other taxation's such as inheritance taxes are legal	Indirect taxes such as excise tax and import duties are lawful

IRS	IRS's 1040 forms originated from the 1040 Bonds used for funding Lincoln's War 1863, first year income tax was ever used in history of US The IRS is a collection arm of the Federal Reserve. The Federal Reserve was created by the Bank of England in 1913 and is owned by foreign investors. The IRS is not listed as a government agency like other government agencies.	No IRS
FLAG		
Flag	**Not an American flag**  Some say it is a flag of Admiralty/Maritime type jurisdiction and is not suppose to be used on Land. Others say it's not a flag at all, but fiction. However, the gold fringe which surrounds the flag gives notice that the American flag has been captured and is now being used by the corporate so-called "government.	**American Flag**  plain and simple--no gold fringe or other ornaments and symbolism attached
Requirements for flags	Appears to be an "American flag" but has one or more of the following: 1. **Gold fringe** along its borders (called "a badge") 2. **Gold braided cord** (tassel) hanging from pole 3. **Ball** on top of pole (last cannon ball fired) 4. **Eagle** on top of pole 5. **Spear** on top of pole Yellow fringed flag is not described in Title 4 of USC and therefore is illegal on land except for maybe (1) the President since he is in charge of Navel Forces on high seas, and (2) naval offices and yards. President Eisenhower settled the debate on the width of the fringe. The so-called justification for a Navel/Maritime flag to be on land is that all land was under the high water mark at one time even if it was eons ago.	Prior to the 1950's, state republic flags were mostly flown, but when a USA flag was flown it was one of the following: 1. **Military flag**--Horizontal stripes, white stars on blue background** 2. **Peace flag**--vertical stripes, blue stars on white background--last flown before Civil War** **Has no fringe, braid (tassel), eagle, ball, spear, etc. (Although the codes do not apply here, the USA Military flag is described in Title 4 of USC) The continental USA is at peace
BENEFITS		
Benefits	**Inalienable rights** Government given rights that are really **Privileges.** Can be taken away at any time So-called Benefits are as follows: 1. **Social Security** (You paid all your working life and there are no guarantees that there will be money for you) 2. **Medicare** 3. **Medicaid** 4. **Grants** 5. **Disaster relief** 6. **Food Stamps**	**Unalienable rights** God given rights *"...incapable [emphasis added] of being aliened, that is, sold and transferred."* **Black's Law Dictionary, Revised Fourth Edition, 1968, page 1693.** Enjoy: 1. **Life** 2. **Liberty** 3. pursuit of **Happiness**

	7. **Licenses and Registration** (Permission) 8. **Privileges** only, no Rights 9. **Experimentation** on citizens without their consent. **Corporate government steals your money and gets credit for helping others with it. Politicians in return create more such programs to get more votes. Eventually there is no more to collect and give. Everyone becomes takers and there are no givers. The government then collapses within. That is why democracy never survives, because the looters eventually outnumber the producers.**	4. **full property ownership**. No US benefits--Every living soul is responsible for themselves and has the option of helping others. Each living soul gives accordingly to help others in need and receives the credit or gives the credit to his Maker and Provider. No tax burdens or government debt obligations.
RECORDS		
Location of records	County Clerk **Recorders Office** Created by statute to keep track of the corporate government's holdings which are applied as collateral to the increasing debt. The written records are a continuation of the "**Doomsday Book**" which keeps track of the Crown of England's holdings. The "Doomsday Book" originated as a written record of the conquered holdings of king William, which was later the basis of his taxes and grants. Property recorded at the recorders office makes the corporate defacto government "holders in due course" Your TV is not recorded there, therefore you are "holder in due course" for the TV.	***Ex-officio*** clerks County Clerk is also Clerk of the superior court, (i.e. a court of common law) and courts of record Records are also kept by Citizens such as in a family Bible
Birth certificate	"Birth Certificate" is required. It puts one into commerce as a *fictional persona*	Record the date family members are born married, and the date they pass on in the Family Bible
Marriage	Must file a "Marriage License". The Corporate State becomes the third party to your union and whatever you conceive is theirs and becomes their property in commerce.	Common Law Marriage Married by a minister or living together for more than 7 years constitutes a marriage Pastor may issue a Certificate of Matrimony
PROPERTY		
Property	Privilege to use 1. Fee title--Feudal Title 2. **Grant Deed** and **Trust Deed** Note: GRANTOR and GRANTEE in all caps are ***fictional persona*** 3. Property tax (Must pay) 4. Other taxes (such as water district taxes) 5. Subject to control by government 6. Vehicle Registration (The incorporated State owns vehicles on behalf of US) 7. Property and vehicles are collateral for the government debt	Full and complete ownership 1. **Allodial Title**--Land Patents--Allodial Freeholder 2. Can not be taxed (Only voluntary) 3. You are **king of your castle** 4. No government intrusion, involvement, or controls
MONEY		
Substance	Has no substance--Built on credit	Has **substance**
Controller of value	Controlled by US Treasury	Controlled by Treasury of the united States of America

Money symbol	Phony/Fiat Money All computer programs are designed with the "$" having only one line through it	Real Money Most of us were taught to write the "S" with two lines through it. The two lines was a derivative of the "U" inside the "S" signifying real US currency based on the American silver dollar and gold-backed currency.
Legal tender	1. Federal Reserve Notes (FRN's)*** 2. Bonds 3. Other Notes--evidences of debt 4. Cashless society--Electronic banking ***Issued by the **Federal Reserve Bank** (FRB)--A private corporation created by the Bank of England in 1913 and is owned by foreign bankers/investors The Federal Reserve is a continuation of the "**Exchequer**" of the Crown of England.	**Silver coins*** (Silver dollar--standard unit of value) **Gold Coins*** Paper currency redeemable in gold or silver* Spanish milled dollar *Issued by the Treasury Department of the USA (A Republic).
Minting of money	The government must borrow before FRN's are printed. The FRB pays 2½ ¢ per FRN note printed whether $1 or $1000. The US in-turn pays FRB interest indefinitely for each outstanding note or representation of a note. With electronic banking FRN's are created out of nothing and nothing being printed. *What a deal!*	Coinage started in 1783. The first paper currency was issued in 1862. "Silver Certificates" last printed in 1957. Coinage of Silver coins for circulation ended with the 1964 coins. Redemption of "Silver Certificates" ended on June 24, 1968.
History	The Greenback Act was revoked and replaced with the National Banking Act in 1863. An Act passed on April 12, 1866 authorized the sale of bonds to retire currency called greenbacks. FRN's (Federal Reserve Notes) were first issued in 1914. Just prior to the Stock Market crash of 1929, millions of dollars of gold was taken out of this Country and transferred to England.	Constitution made all currency gold and silver.
ROADWAYS		
Use of roadways	Drivers Licenses are required, because driving is **a privilege**.	Sovereigns have **a right** to use the public ways.
Driving "privileges"	May lose privilege or have it suspended at the whim of government	"**Liberty** of the common way"
Driver's licenses	Must comply with the Department of Motor Vehicles, the Vehicle Code, which is ever changing, and the Highway Patrol. Even a "Class 3" Driver's license is a "commercial" license. A "Driver" is one who does commercial business on the highways	No "Driver's License" is required for private, personal, and recreational use of the roadways. A "driver's license" can only be required for those individuals or businesses operating a business within the rights-of-ways such as Taxi Drivers, Truck Drivers, Bus Drivers, Chauffeurs, etc.
Definition of "Vehicle"	"Vehicle"--automobile or truck doing business on the highway	"Car"--short for "carriage" such as "horseless carriage" for private use
"Passenger"	"Passenger"--A paying customer who wants to be transported to another location	"Guest"--One who comes along for pleasure or private reasons without cost
Movement	"Drive"--The act of commercial use of the right-of-way	"Travel"--The act of private, personal, and recreational use of the roadways
MAIL		
Types of mail	**Domestic** Mail that moves between D.C., possessions and territories of the U.S.	**Non-domestic** Mail that moves outside of D.C. its possessions and territories
Zip codes	**Zip Codes** are required when using "jurisdictional regions or zones" such as "CA", NV, AZ, etc.	Zip Code not required and should not be used.
Cost of stamp	Cost is 34 cents for first class	3 cents--Sovereign to Sovereign Otherwise 34 cents

Designation of regions	Must now use "jurisdictional regions or zones" such as "CA", NV, AZ, etc. Purposely used ***ad nauseum*** which means "no name at all"	Write out the state completely such as "California" or abbreviated "Calif.". Never use "CA" for an address to a Sovereign or in your return address.
GUNS		
Philosophy on gun ownership	This government **wants to disarm** the Citizens so as to have complete control and power. Every tyrannical government in the past has taken away the guns to prevent any serious opposition or rebellion. History continues to repeat itself because the new generations who come along don't know or tend to forget about the past and will say it will not happen here.	Sovereign Citizens have **a right** to own and use guns--"Right to bear arms" against "enemies foreign and **domestic**". The founding fathers knew the importance of protecting themselves from governments who get out of hand.
Legal constraints on gun ownership	Disregards the 2nd Amendment or justifies what weapons should not be legal. Ever changing and ever restrictive. Requires **registration of guns**. If any of you saw the motion picture called "Red Dawn" would realize that the enemy finds these lists and then goes door to door collecting all of the guns.	**2nd Amendment** Protects the Right of the people to keep and bear arms.
RELIGION		
Relationship between church and state	This government wants to control the churches by having them come under their jurisdiction as **corporations** under **Section 501(c)(3)**. This is to prevent the clergy, Pastors, Ministers, etc. from having any political influence on its members or the public in general. This government regulates what is to be said and not to be said. These churches also display the **gold fringe flag**. Their faith is in the government and not in God. They exist by permission of this government not by God alone.  They **signed away their Birthright** for a so-called benefit: "Tax-exempt corporation".	Churches exist alone. No permission of government required.  1st Amendment Protects against government making a law that would respect an establishment of religion or prohibit the free exercise of a religion.

 Last revision: April 06, 2006 02:33 PM

Sovereignty Education and Defense Ministry (SEDM)
FORM INDEX

TABLE OF CONTENTS:

This page contains a listing of all the free forms available on our website that may prove useful in various situations relating to sovereignty and taxes. The forms are arranged either by form number or by their use, to make finding them easier. The forms are provided in Adobe Acrobat format and may be viewed by downloading and installing the latest FREE Adobe Acrobat Reader from the link below:

http://www.adobe.com/products/acrobat/readstep2.html

Most of our forms are also FILLABLE from within the Acrobat Reader as well! Simply click on the fill-in box provided for each field, fill in the data, and save your copy of the form as a completed template. Then you can reuse the completed form again in the future so as to save you time in responding to tax collection notices. This is a very handy feature.

1. SEQUENTIAL CATEGORIZED INDEX OF SEDM FORMS

Section 5, the Memorandums of Law section, contains memorandums of law that you can attach to your pleadings and correspondence with opposing counsel during a legal dispute. Most of these memorandums of law end with a series of admissions relating to the subjects discussed in the memorandum, making them ideal for use as a discovery device during litigation as well.

Form #	Format	Title	Circumstances where used	Related Resources/Information	Date of Last Revision
1. GENERAL					
01.001	PDF	SEDM Articles of Mission	Our Mission Statement		11/29/2005
01.002	PDF	SEDM Member Agreement	Use this form to join the organization. You cannot use or view or obtain our materials without being a Member.	Member Agreement	11/11/2005
01.003	PDF	Fax Cover Sheet	Use this sheet to record your questions for comments to SEDM and then fax it to us.		4/13/2005
01.004	PDF	Famous Quotes about Rights and Liberty	Useful on any occasion		10/25/2005
01.005	HTML	Proof of Mailing	Useful to provide proof of what you mailed and when. OFFSITE LINK		10/15/2005
2. AFFIDAVITS					
02.001	PDF	Affidavit of Citizenship, Domicile, and Tax Status	Attach to an application for a financial account or job withholding form. Establishes and explains your status as a "national" and not a "citizen" under federal law.	1. Why you are a "national" or a "state national" and not a "U.S. citizen" 2. Why "domicile" and income taxes are voluntary	4/12/2006
02.002	PDF	Affidavit of Material Facts	Use this enclosure with a state response letter to establish citizenship and taxpayer status in a narrative format. Includes check marks in front of each item so that it can be reused again and made into a "Notice of Default" against a tax collection agency.	1. Federal Response Letters 2. State Response Letters	9/25/2005
02.003	PDF	Affidavit of Duress: Member Deposition	Members may use this if government attempts to compel them to attend a deposition which might either incriminate them or the SEDM ministry.		10/13/2006
02.004	PDF	Affidavit of Corporate Denial	Use this form to remove or destroy the jurisdiction of federal courts and the IRS to enforce any federal law against you.	1. Federal Jurisdiction 2. Why your Government is Either A Thief or You Are a Federal Employee for Federal Income Tax Purposes	1/29/2006
3. DISCOVERY					
03.001	ZIP file	Amplified Deposition Transcript	Use this transcript as a way to provide an amplified deposition transcript if the opposing U.S. Attorney insists that you did not answer some of the questions at a previous deposition. Scan in the original transcript, convert to text, and past into chapter 4 of this document.		2/20/2006
03.002	HTML	Handling and Getting a Due Process Hearing	This article shows how to fill out IRS form 12153 to maximize your chances of getting an in-person due process hearing.		NA
03.003	PDF	Admissions relating to alleged liability	Use this in your response to IRS notices as a way to establish what your liability is. Can be used in conjunction with Form 0001 above.	Master File Decoder Correcting Erroneous IRS form W-2's	9/30/2005
03.004	PDF	Deposition Agreement	Use this agreement when the government is attempting to depose an SEDM member. It ensures a fair hearing and equal opportunity to ask questions or each other.	Member Agreement (requires use of this form)	4/12/2006
03.005	PDF	Deposition Handout	Members may use this form to give to any government attorney or employee who has subpoenad them to give oral testimony under Federal Rule of Civil Procedure Rule 30 in relation to their involvement in this Ministry.	Federal Rule of Civil Procedure Rule 30 (OFFSITE LINK)	4/12/2006
03.006	PDF	SSA Form SSA-L996: Social Security Number Request for Extract or Photocopy	Use this form to obtain a copy of any Social Security records that the SSA is maintaining connected to your all caps name.	1. Socialism: The new American Civil Religion 2. Social Security: Mark of the Beast (OFFSITE LINK)	4/12/2006
03.007	PDF	Bureau of Public Debt FOIA	Use this form to obtain records of public debt issued in the name of an SSN, TIN, or SS Card Number. This constitutes proof that your application to SSA makes you into surety for federal debt.		11/17/2006
03.008	PDF	IRS Due Process Meeting Handout	Mail this form in advance of an IRS Audit or meeting and demand proof of authority on the record from the agent. Also bring it along with you to the due process meeting and demand that proof of jurisdiction be provided on the record using this form.	Nontaxpayer's Audit Defense Manual	12/13/2006
4. TAX WITHHOLDING, COLLECTION, AND REPORTING *(Please read Federal and State Tax Withholding Options for Private Employers)*					
04.001	HTML	IRS form W-8BEN	Provide to financial institutions and private employers to stop withholding and reporting of earnings.	About IRS form W-8BEN	4/13/2005
04.002	HTML	IRS form 56	Send this in to change your IRS status so that you aren't a fiduciary for an artificial entity or business	About IRS form 56	4/13/2005
04.003	HTML	IRS form 1098	Send in a corrected version of this report to zero out erroneous reports of mortgage interest payments "effectively connected with a trade or business".	Correcting Erroneous IRS form 1098's	4/13/2005
04.004	HTML	IRS form 1099	Send in a corrected version of this report to zero out erroneous reports of income "effectively connected with a trade or business".	Correcting Erroneous IRS form 1099's	4/13/2005
04.005	HTML	IRS form W-2	Send in to correct erroneous W-2 reports sent in by private employs with whom you have a W-8 on file and/or did not authorize withholding.	Correcting Erroneous IRS form W-2's	4/13/2005

04.006	PDF	Demand for Verified Evidence of "Trade or Business" Activity: Information Return	Use this form in the case where someone you work for or with is trying wants to fill out an Information Return against you, and you are not engaged in a "trade or business". This prevents you from having false or erroneous Information Returns filed against you by educating companies and financial institutions about their proper use.	The "Trade or Business" Scam	3/17/2006
04.007	PDF	Certification of Federally Privileged Status	Use this form with your private employer to get certification that you are not a federal "employee" or privileged "public official"	The "Trade or Business" Scam	3/17/2006
04.008	PDF	Demand for Verified Evidence of "Trade or Business" Activity: Currency Transaction Report (CTR)	Use this form in the case where you are trying to withdraw $10,000 or more from a financial institution in cash, and they want to fill out a Currency Transaction Report (CTR), Treasury form 8300, on the transaction. Typically, banks are not subject to federal legislative jurisdiction AND the CTR's can only be completed on those who are engaged in a "trade or business", which few Americans are.	The "Trade or Business" scam	1/23/2006
04.009	PDF	Tax Withholding and Reporting: What the Law Says	Present this form to private companies who you work for as a private employee, in order to educate them about what the law requires in the case of payroll withholding.	1. Federal and State Withholding Options for Private Employers (OFFSITE LINK) 2. Federal Tax Withholding	4/30/2006
04.010	PDF	IRS Form 1042	Send in a corrected version of this report to zero out erroneous reports of gross income for those nonresident aliens who are not engaged in a "trade or business".	Correcting Erroneous IRS form 1042's	11/15/2006
04.011	PDF	IRS Form 1098 Lender Letter	Send this form to lenders and mortgage companies who are wrongfully filing IRS form 1098's against you as a nonresident alien not engaged in a "trade or business" to get them to stop filing the false reports so that you don't have to correct them later.	Correcting Erroneous IRS form 1098's	11/15/2006
5. MEMORANDUMS OF LAW					
05.001	PDF	The Trade or Business Scam	Attach to your letters and correspondence to explain why you have no reportable income	1. Demand for Verified Evidence of Trade or Business Activity: CTR 2. Demand for Verified Evidence of Trade or Business Activity: Information Return	9/4/2006
05.002	PDF	Why Domicile and Income Taxes are Voluntary	Attach to your letters and correspondence to explain why you have no reportable income	Sovereignty Forms and Instructions: Cites by Topic, "Domicile" (OFFSITE LINK)	10/9/2005
05.003	PDF	Requirement for Consent	Attach to your letters and correspondence to explain why you aren't obligated to follow the I.R.C. because it isn't "law" for you	Declaration of Independence (OFFSITE LINK)	9/6/2006
05.004	PDF	Political Jurisdiction	Attach to legal pleadings in order to ensure that the court does not challenge or undermine your choice of citizenship or domicile. Establishes that any court which attempts to do this is involving itself in "political questions", which is a violation of the separation of powers doctrine.		9/25/2006
05.005	PDF	Federal Tax Withholding	For use in those seeking new employment or who wish to terminate employment tax withholding. Use in conjunction with the *Federal and State Tax Withholding Options for Private Employers* book. This is an abbreviated version of what appears in chapter 16 for management types who have little patience and a short attention span, which is most bosses.	Federal and State Tax Withholding Options for Private Employers (OFFSITE LINK) Income Tax Withholding and Reporting	3/23/2006
05.006	PDF	Why you are a "national" or "state national" and not a "U.S. citizen"	For use in obtaining a passport, for job applications, and to attach to court pleadings in which you are declaring yourself to be a "national" and a "nonresident alien".	Citizenship and Sovereignty Seminar Developing Evidence of Citizenship Seminar	8/23/2006
05.007	PDF	Reasonable Belief About Tax Liability	For use by those: 1. Establishing a reasonable belief about liability. 2. Corresponding with the IRS. 3. Being criminally prosecuted for failure to file or tax evasion.	Great IRS Hoax Federal and State Tax Withholding Options for Private Employers (OFFSITE LINK)	9/6/2006
05.008	PDF	Why Your Government is Either A Thief or You are a "Public Official" for Income Tax Purposes	Use this as an attachment to prove why Subtitle A of the Internal Revenue Code, in context of employment withholding and earnings on a 1040, are connected mainly with federal employment.		3/23/2006
05.009	PDF	Legal Requirement to File Federal Income Tax Returns	Use this as an attachment in response to a CP-518 IRS letter, or as part of a brief in response to criminal prosecution for "Willful Failure to File" under 26 USC §7203.	Reasonable Belief About Tax Liability	3/4/2006
05.010	PDF	Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	Use this as an attachment in response to an IRS penalty collection notice to prove that you aren't responsible to pay the assessed penalty. Make sure you also follow the guidelines relating to SSNs in our article entitled "About SSNs/ TINs on Tax Correspondence"	26 U.S.C. §6671(b) (OFFSITE LINK) Sovereignty Forms and Instructions, Cites by Topic, "Bill of Attainder" (OFFSITE LINK)	1/26/2006
05.011	PDF	Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons	Use this as an attachment in response to an IRS or state "Notice of Proposed Assessment" or 90-day letter to show that the proposed assessment is illegal. Make sure you also attach IRS form 4852's and corrected 1099's to zero out illegal reports of taxable income using the links provided at the beginning of the memorandum.	Sovereignty Forms and Instructions, Cites by Topic, "assessments" (OFFSITE LINK)	1/8/2006

05.012	PDF	About SSNs and TINs on Government Forms and Correspondence	Use this form whenever you are filling out paperwork that asks for an SSN and the recipient won't accept the paperwork because you said "None" on the SSN block. The questions at the end will stop all such frivolous challenges by recipients of the forms you submit, if they have even half a brain.	Wrong Party Notice About IRS form W-8BEN	3/4/2006
05.013	PDF	Who are "taxpayers" and who Needs a "Taxpayer Identification Number"?	Attach this to financial account applications, job applications, etc. Shows why you don't need SSNs or TINs on government correspondence.	"Taxpayer" v. "Nontaxpayer", Which One are You? (OFFSITE LINK)	10/9/2005
05.014	PDF	The Meaning of the Words "includes" and "including"	Rebuttal to the most popular IRS lie and deception. Attach to response letters or legal pleading.	1. Rebutted Version of IRS The Truth About Frivolous Tax Arguments 2. Statutory Interpretation: General Principles and Recent Trends (OFFSITE LINK)	10/8/2006
05.015	PDF	Commercial Speech	Helpful to those facing injunctions.	Freedom of Speech and Press: Exceptions to the First Amendment (OFFSITE LINK)	7/24/2006
05.016	PDF	Socialism: The New American Civil Religion	Proves that government has become a false god and an idol in modern society in violation of the First Amendment.	1. Family Guardian: Communism and Socialism (OFFSITE LINK) 2. Social Security: Mark of the Beast (OFFSITE LINK) 3. The Law (OFFSITE LINK)	7/29/2006
05.017	PDF	Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction	Explains how federal agencies, courts, and the law profession unlawfully use "presumption" as a means to enlarge federal or government jurisdiction.	Sovereignty Forms and Instructions, Cites by Topic, "presumption" (OFFSITE LINK)	6/30/2006
05.018	PDF	Federal Jurisdiction	Explains choice of law in deciding federal jurisdiction in the context of federal income tax trials.		9/25/2006
05.019	PDF	Court Sanctions, Contempts, and Defaults	Describes circumstances under which court sanctions and contempt of court may lawfully be imposed in federal court.	1. Federal Rule of Civil Procedure Rule 11 (OFFSITE LINK) 2. Federal Rule of Civil Procedure Rule 37(b) (OFFSITE LINK)	2/17/2006
05.020	PDF	Nonresident Alien Position	Describes and defends the Nonresident Alien Position that is the foundation of this website.	About IRS Form W-8BEN	10/26/2006
05.021	PDF	Silence as a Weapon and a Defense in Legal Discovery	Describes how to use your constitutional rights to prevent incriminating yourself or prejudicing your Constitutional rights. Also describes how to respond to such tactic.	Federal Rule of Civil Procedure Rule 8(d) (OFFSITE LINK)	7/17/2006
05.022	PDF	Requirement for Reasonable Notice	Describes the requirement for reasonable notice and how you can find out what laws you are required to obey based on how they are noticed by the government.	Federal Register Act (OFFSITE LINK) Administrative Procedures Act (OFFSITE LINK)	8/15/2006
05.023	PDF	Government Conspiracy to Destroy the Separation of Powers	Describes historical efforts by the government to break down the separation of powers and destroy our God-given rights.	Separation of Powers Doctrine	9/5/2006
05.024	PDF	Apostille of Documents	Describes how to get your documents apostilled by the Secretary of State of your State for international use. This is useful for form 06.005 below.	State legal resources (OFFSITE LINK. find a state secretary of state)	8/18/2006
05.025	PDF	Government Burden of Proof	Describes the burden of proof imposed upon the government whenever enforcement actions are employed.		8/28/2006
05.026	PDF	How the Government Defrauds You Out of Legitimate Deductions for the Market Value of Your Labor	Describes how to lawfully and legally deduct the entire market value of your labor from your earnings on a federal or state tax return.	Is the Income Tax a Form of Slavery? (OFFSITE LINK)	10/14/2006
05.027	PDF	Meaning of the word "Frivolous"	Describes the meaning of the word "frivolous", how it is abused by the government and legal profession, and how to prevent such abuses		10/3/2006
05.028	PDF	Laws of the Bible	Index and authorities on all the moral laws of the Bible, and how to apply them to the practical affairs of daily secular life.	Holy Bible (OFFSITE LINK)	10/13/2006
05.029	PDF	Unlicensed Practice of Law	Those wishing to lawfully help or assist others in the practice of law, including in arguing before courts of law, may attach this to Litigation Tool 3.003 in order to prove that they have authority to do so.	Litigation Tool 3.003: Motion for Non-Bar Counsel	12/14/2006
6. EMANCIPATION					
06.001	PDF	Why You Aren't Eligible for Social Security	Use this form to apply for a driver's license without a Slave Surveillance Number. Most states require applications who are eligible for Social Security to provide a number. This pamphlet proves you aren't eligible and therefore don't need one.	Social Security: Mark of the Beast (OFFSITE LINK)	9/22/2005
06.002	PDF	Resignation of Compelled Social Security Trustee	Allows a person to legally and permanently quit Social Security. Used with permission from original author.	1. Social Security: Mark of the Beast (OFFSITE LINK) 2. Socialism: The New American Civil Religion 3. About IRS form 56	9/24/2005
06.003	PDF	Sovereignty Forms and Instructions Book	Free forms and instructions which help you achieve and defend personal sovereignty and the sovereignty of God in the practical affairs of your life. Also available in online version. This is an OFFSITE resource and we are not responsible for the content.	Online version of this book (OFFSITE LINK)	2/21/2006
06.004	PDF	Enumeration of Inalienable Rights	Use this form to litigate in court to defend your rights. Gives you standing without the need to quote federal statutes that you are not subject to anyway as a nonresident alien.	Constitution Annotated	4/24/2006

06.005	ZIP	Legal Notice of Change in Domicile/ Citizenship Records and Divorce from the United States	This form completely divorces the government and changes your status to that of a "stateless person" and a "transient foreigner" not subject to civil court jurisdiction and a "nontaxpayer". After filing this form, you can also use it to rebut tax collection notices.	1. Why you are a "national" or a "state national" and not a "U.S. citizen" 2. Why Domicile and Income Taxes are Voluntary	8/6/2006
7. RESPONSE LETTERS					
7.1 GENERAL					
07.011	PDF	Payment Delinquency and Copyright Violation Notice	Use this form to respond to state or federal tax collection notices. It can be used in connection with the Change of Address Attachment Affidavit.		9/8/2005
07.012	PDF	Wrong Party Notice	Send this notice if the state or IRS collection notice you received was delivered to a person with an all caps name or with any kind of identifying number.	About SSNs and TINs on Government Forms and Correspondence	10/4/2005
07.013	PDF	1098 Interest: Request for Filing Response	Send this form attached to a letter in which you respond to a state or IRS notice requesting you to file based on their receipt of an IRS form 1098, which is the form used by mortgage companies to report receipt of payments on a mortgage.	The "trade or business" scam	1/20/2006
07.014	PDF	Legal notice to cease and desist illegal enforcement activities	Use this form to officially notify the government collection agency that they are engaging in unlawful activity, are personally liable, and may not impose any provision of law against you without first proving you are a "taxpayer" with other than information hearsay returns.		8/1/2006
07.015	PDF	Third Party Tax Debt Collector Attachment	Use this form as an attachment to any correspondence you send a private debt collector in connection with any tax collection activity they are undertaking against you.		11/1/2006
7.2 FEDERAL					
07.021	PDF	Demand for Verified Evidence of Lawful Federal Assessment	Used in response to an IRS collection notice to request verified evidence validating the assessment connected to the amounts alleged to be owed.	1. Master File Decoder 2. Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	4/12/2006
07.022	PDF	Assessment Response: Federal	Systematic way to respond to a federal penalty or tax assessment notice that is improper or illegal.	1. Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons 2. Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	7/28/2006
07.023	PDF	Substitute for Federal Form 1040NR	Use this to respond to an IRS demand for a return to be filed.		10/5/2006
7.3 STATE					
07.031	PDF	Demand for Verified Evidence of Lawful State Assessment	Used in response to an State collection notice to request verified evidence validating the assessment connected to the amounts alleged to be owed.	1. Master File Decoder 2. Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	4/12/2006
07.032	PDF	Assessment Response: State	Systematic way to respond to a state penalty or tax assessment notice that is improper or illegal.	1. Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons 2. Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents	4/13/2006
07.033	PDF	Substitute for State Nonresident Tax Return	Use this to respond to a state demand for a return to be filed.		8/11/2006

2. SITUATIONAL INDEX OF FORMS

Locate the situation you are in and then find forms relative to that specific situation in the subsections below. For further information pertinent to each situation, see:

- Our Situational References Page in the Liberty University, item 5.1.
- Subject Index (OFFSITE LINK)- Family Guardian

2.1. Applying for a job and Dealing with Employers

About IRS form W-8BEN: FORM 04.001 - this is the ONLY withholding form a nontaxpayer can use. The W-4 leads to BIG trouble and violation of law
Affidavit of Citizenship, Domicile, and Tax Status: FORM 02.001
Demand for Verified Evidence of "Trade or Business" Activity: Information Return: FORM 04.006- Use this form in the case where someone you work for or with may or definitely will file a fraudulent Information Return against you, and you are not engaged in a "trade or business". This prevents you from having false or erroneous Information Returns filed against you by educating companies and financial institutions about their proper use. Information Returns include

Federal Forms W-2, 1042-S, 1098, and 1099.
Federal Tax Withholding: FORM 05.005-brief pamphlet to hand to private employer to educate him about his withholding duties
Federal and State Withholding Options for Private Employers-lots of useful forms at the end of the document. Mainly for employees. Too long and may scare away private employers. Section 23.13, FORM 13 in that book is very useful to attach to your job application
Letter to Government Employer Stopping Withholding (OFFSITE LINK)
Letter to Commercial Employer Stopping Withholding (OFFSITE LINK)
Payroll Withholding Attachment (OFFSITE LINK)
Substitute IRS Form W-8BEN (OFFSITE LINK)
Who are "taxpayers" and who needs a "Taxpayer Identification Number": FORM 05.013 - short pamphlet you can attach to a job application to prove that you don't need to deduct or withhold and aren't a "taxpayer"

2.2. Changing your Citizenship and Domicile with State and Federal Governments

Change of Address Form Attachment (OFFSITE LINK)
Legal Notice of Change in Domicile/Citizenship Records and Divorce from the United States (OFFSITE LINK)
Passport Amendment Request (OFFSITE LINK)
Voter Registration Attachment (OFFSITE LINK)

2.3. General purpose

Attachment to Government Form that Asks for Social Security Number (OFFSITE LINK)
Famous Quotes About Rights and Liberty: FORM 01.003
Proof of Mailing: FORM 01.005 (OFFSITE LINK)
SEDM Fax Cover Sheet: FORM 01.004
SEDM Member Agreement: FORM 01.001

2.4. Litigation

SEDM Litigation Tools Page, Section 2

2.5. Opening financial accounts or making investments without withholding or a number

About SSNs/TINs on Government Forms and Correspondence: FORM 05.012- attach to account application to prove why you don't need a number
Affidavit of Citizenship, Domicile, and Tax Status: FORM 02.001
IRS Form W-8BEN: FORM 04.001
IRA Rollover Attachment (OFFSITE LINK)
Letter to remove SSN and tax withholding from account (OFFSITE LINK)
Legal Address Inquiry Letter Response (OFFSITE LINK)
Substitute IRS Form W-9 (OFFSITE LINK)
Who are "taxpayers" and who needs a "Taxpayer Identification Number": FORM 05.013-attach to account application to prove why you don't need a number

2.6. Responding to federal and state collection notices

Federal letter and notice index -index of all federal tax collection notices and letters and their responses
State letter and notice index - index of all state tax collection notices and letters and their reponses
Admissions relating to alleged liability: FORM 03.004
Affidavit of Material Facts: FORM 02.002
Demand for Verified Evidence of Lawful Federal Assessment: FORM 03.001

Demand for Verified Evidence of Lawful State Assessment: FORM 03.002
IRS Form W-8BEN: FORM 04.001
IRS Form 4852: FORM 04.002
IRS Form 1098: FORM 04.003
IRS Form 1099: FORM 04.004
IRS Form 56: FORM 04.004
Legal Requirement to File Federal Income Tax Returns: FORM 05.009
Test for Federal Tax Professionals (OFFSITE LINK)
Test for State Tax Professionals (OFFSITE LINK)
The Meaning of the Words "includes" and "including": FORM 05.014 - attach responses to prove the IRS is lying about the use of the word "includes" in determining the meaning of definitions within the I.R.C.
Who are "taxpayers" and who needs a "Taxpayer Identification Number": FORM 05.013-attach to account application to prove why you don't need a number
Why Penalties are Illegal for Anything But Federal Employees, Contractors, and Agents: FORM 05.010
Why Assessments and Substitute for Returns are Illegal Under the I.R.C. Against Natural Persons: FORM 05.011
Writing Effective Response Letters-SEDM article
Wrong Party Notice: FORM 07.002 - use this form to explain why the TIN or SSN or the name on a collection notice are wrong. IRS cannot use any SSN, TIN, or all caps name to address you without assuming that you are a federal "employee"

2.7. Withdrawing cash from financial institutions

Demand for Verified Evidence of "Trade or Business" Activity: CTR: FORM 03.003 -use this if they try to violate the law by preparing a Currency Transaction Report for your withdrawal

2.8. Quitting Social Security and Functioning Without an SSN

Resignation of Compelled Social Security Trustee: FORM 06.002 - quit Social Security completely and get all your money back
Why You Aren't Eligible for Social Security: FORM 06.001 -use this to get a state driver's license without a Social Security Number
Wrong Party Notice: FORM 07.002 - use this form to explain why the TIN or SSN or the name on a collection notice are wrong. IRS cannot use any SSN, TIN, or all caps name to address you without assuming that you are a federal "employee"

3. ELECTRONIC FORMS COMPILATIONS

1. American Jurisprudence Pleading and Practice CD-ROM (OFFSITE LINK)-Excellent!
2. American Jurisprudence Legal Forms 2d CD (OFFSITE LINK)-Excellent!
3. Superforms- tax forms

4. OTHER FORMS SITES

NOTE: All of the links below are offsite links. We have no relationship with any of these parties.

4.1 General Forms

1. Sovereignty Forms and Instructions: Forms- Family Guardian
2. Common Law Venue: Forms Page

4.2 Tax Forms

1. Federal Forms and Publications- Family Guardian. Includes modified versions of most Federal Forms
2. Internal Revenue Service: Forms and Publications- WARNING: The forms from the IRS are designed to prejudice your rights and destroy your privacy. They ask for information that you aren't obligated by law to provide. You are much better off using the altered and "improved" versions of their forms posted on the Family Guardian website in link #2 above.
3. State Tax Forms
4. State Income Taxes
5. 1040.com-tax forms

4.3 Legal Forms

1. ContractStore
2. CourtTV Legal Forms
3. E-Z Legal forms
4. FindForms.com
5. Free Legal Forms -Pre-Paid Legal Services
6. HotDocs -legal forms preparation software
7. Law Forms USA
8. Law Guru -legal forms archive
9. Lectric Law Library: General Forms
10. Legal Forms On Demand
11. Legal Kits
12. LegalZoom
13. LexisOne Free Legal Forms -requires HotDocs installed, in most cases
14. U.S. Court Forms
15. U.S. Legal Forms
16. Versus Law U.S. Legal forms

§ 7608. Authority of internal revenue enforcement officers

(a) Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms

Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary is responsible may—

(1) carry firearms;

(2) execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(3) in respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4) in respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

(b) Enforcement of laws relating to internal revenue other than subtitle E

(1) Any criminal investigator of the Intelligence Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws, any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service, is, in the performance of his duties, authorized to perform the

functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

(A) to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and

(C) to make seizures of property subject to forfeiture under the internal revenue laws.

(c) Rules relating to undercover operations

(1) Certification required for exemption of undercover operations from certain laws

With respect to any undercover investigative operation of the Internal Revenue Service (hereinafter in this subsection referred to as the "Service") which is necessary for the detection and prosecution of offenses under the internal revenue laws, any other criminal provisions of law relating to internal revenue, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service—

(A) sums authorized to be appropriated for the Service may be used —

(i) to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to—

(I) sections 1341 and 3324 of title 31, United States Code,

(II) sections 11 (a) and 22 of title 41, United States Code,

(III) section 255 of title 41, United States Code,

(IV) section 8141 of title 40, United States Code, and

(V) section 254 (a) and (c) [1] of title 41, United States Code, and

(ii) to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code;

(B) sums authorized to be appropriated for the Service and the proceeds from the undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code, and

(C) the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31, United States Code.

This paragraph shall apply only upon the written certification of the Commissioner of Internal Revenue (or, if designated by the Commissioner, the Deputy Commissioner or an Assistant Commissioner of Internal Revenue) that any action authorized by subparagraph (A), (B), or (C) is necessary for the conduct of such undercover operation.

(2) Liquidation of corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation under subparagraph (B) of paragraph (1) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his delegate determines is practicable, shall report the circumstances to the Secretary. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(3) Deposit of proceeds

As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under subparagraphs (B) and (C) of paragraph (1) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(4) Audits

(A) The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year; and

(i) submit the results of the audit in writing to the Secretary; and

(ii) not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(B) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(i) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(ii) the number, by programs, of undercover investigative operations commenced in the 1-year period for which such report is submitted;

(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

(iv) the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period—

(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

(II) the total expenditures under the operation and the amount and use of the proceeds from the operation,

(III) a detailed description of the operation including the potential violation being investigated and whether the operation is being conducted under grand jury auspices, and

(IV) the results of the operation including the results of

criminal proceedings.

(5) Definitions

For purposes of paragraph (4)—

(A) Closed

The term "closed" means the date on which the later of the following occurs;

(i) all criminal proceedings (other than appeals) are concluded, or

(ii) covert activities are concluded, whichever occurs later.

(B) Employees

The term "employees" has the meaning given such term by section 2105 of title 5, United States Code.

(C) Undercover investigative operation

The term "undercover investigative operation" means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code.

(6) Application of section

The provisions of this subsection—

(A) shall apply after November 17, 1988, and before January 1, 1990, and

(B) shall apply after the date of the enactment of this paragraph and before January 1, 2006.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2006.

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[1] See References in Text note below.

Prev | Next

U.S. Code collection

TITLE 26 > Subtitle E

Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

How Current is This?

Sec. 7608. - Authority of internal revenue enforcement officers

(a) Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms

Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary is responsible may -

(1)

carry firearms;

(2)

execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(3)

in respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4)

in respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

(b) Enforcement of laws relating to internal revenue other than subtitle E

(1)

Any criminal investigator of the Intelligence Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws, any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service, is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2)

The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are -

(A)

to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(B)

to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and

(C)

to make seizures of property subject to forfeiture under the internal revenue laws.

(c) Rules relating to undercover operations

(1) Certification required for exemption of undercover operations from certain laws

With respect to any undercover investigative operation of the Internal Revenue Service (hereinafter in this subsection referred to as the ''Service'') which is necessary for the detection and prosecution of offenses under the internal revenue laws, any other criminal provisions of law relating to internal revenue, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service -

(A)

sums authorized to be appropriated for the Service may be used -

(i)

to purchase property, buildings, and other facilities, and to lease space, within the United States, the District of Columbia, and the territories and possessions of the United States without regard to -

(I)

sections 1341 and 3324 of title 31, United States Code,

(II)

sections 11(a) and 22 of title 41, United States Code,

(III)

section 255 of title 41, United States Code,

(IV)

section 34 of title 40, United States Code, and

(V)

section 254(a) and (c) [1] of title 41, United States Code, and

(ii)

to establish or to acquire proprietary corporations or business entities as part of the undercover operation, and to operate such corporations or business entities on a commercial basis, without regard to sections 9102 and 9103 of title 31, United States Code;

(B)

sums authorized to be appropriated for the Service and the proceeds from the undercover operations may be deposited in banks or other financial institutions without regard to the provisions of section 648 of title 18, United States Code, and section 3302 of title 31, United States Code, and

(C)

the proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in such operation without regard to the provisions of section 3302 of title 31, United States Code.

This paragraph shall apply only upon the written certification of the Commissioner of Internal Revenue (or, if designated by the Commissioner, the Deputy Commissioner or an Assistant Commissioner of Internal Revenue) that any action authorized by subparagraph (A), (B), or (C) is necessary for the conduct of such undercover operation.

(2) Liquidation of corporations and business entities

If a corporation or business entity established or acquired as part of an undercover operation under subparagraph (B) of paragraph (1) with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or his delegate determines is practicable, shall report the circumstances to the Secretary. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(3) Deposit of proceeds

As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under subparagraphs (B) and (C) of paragraph (1) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited into the Treasury of the United States as miscellaneous receipts.

(4) Audits

(A)

The Service shall conduct a detailed financial audit of each undercover investigative operation which is closed in each fiscal year; and

(i)

submit the results of the audit in writing to the Secretary; and

(ii)

not later than 180 days after such undercover

operation is closed, submit a report to the Congress concerning such audit.

(B)

The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations -

(i)

the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(ii)

the number, by programs, of undercover investigative operations commenced in the 1-year period for which such report is submitted;

(iii)

the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

(iv)

the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period -

(I)

the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

(II)

the total expenditures under the operation and the amount and use of the proceeds from the operation,

(III)

a detailed description of the operation including the potential violation being investigated and whether the operation is being conducted under grand jury auspices, and

(IV)

the results of the operation including the results of criminal proceedings.

(5) Definitions

For purposes of paragraph (4) -

(A) Closed

The term ''closed'' means the date on which the later of the following occurs;

(i)

all criminal proceedings (other than appeals) are concluded, or

(ii)

covert activities are concluded, whichever occurs later.

(B) Employees

The term ''employees'' has the meaning given such term by section 2105 of title 5, United States Code.

(C) Undercover investigative operation

The term ''undercover investigative operation'' means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code.

(6) Application of section

The provisions of this subsection -

(A)

shall apply after November 17, 1988, and before January 1, 1990, and

(B)

shall apply after the date of the enactment of this paragraph and before January 1, 2006.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be

recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2006

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[1] See References in Text note below.

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§ 6001. Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053 (c), and copies of statements furnished by employees under section 6053 (a).

§ 6011. General requirement of return, statement, or list

How Current is This?

(a) General rule

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer

The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, etc., of DISCS and former DISCS and FSC's and former FSC's

(1) Records and information

A DISC or former DISC or a FSC or former FSC shall for the taxable year —

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B) keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns

A DISC shall file for the taxable year such returns as may be prescribed

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by the Secretary by forms or regulations.

(d) Authority to require information concerning section 912 allowances

The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations requiring returns on magnetic media, etc.

(1) In general

The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) Requirements of regulations

In prescribing regulations under paragraph (1), the Secretary—

(A) shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(f) Promotion of electronic filing

(1) In general

The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration programs, as they become available, through the use of mass communications and other means.

(2) Incentives

The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g) Income, estate, and gift taxes

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C.

§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person

The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner

The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation

The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) Domestic

The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

(5) Foreign

The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) Fiduciary

The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock

The term "stock" includes shares in an association, joint-stock company, or insurance company.

(8) Shareholder

The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) United States

The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) State

The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) Secretary of the Treasury and Secretary

(A) Secretary of the Treasury

The term "Secretary of the Treasury" means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary

The term "Secretary" means the Secretary of the Treasury or his delegate.

(12) Delegate

(A) In general

The term "or his delegate"—

(i) when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii) when used with reference to any other official of the United States, shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa

The term "delegate," in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner

The term "Commissioner" means the Commissioner of Internal Revenue.

(14) Taxpayer

The term "taxpayer" means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States

The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

(17) Husband and wife

As used in sections 682 and 2516, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

(18) International organization

The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f).

(19) Domestic building and loan association

The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association—

(A) which either (i) is an insured institution within the meaning of section 401(a) [1] of the National Housing Act (12 U.S.C., sec. 1724 (a)), or (ii) is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B) the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C) at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of—

(i) cash,

(ii) obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political

subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103,

(iii) certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv) loans secured by a deposit or share of a member,

(v) loans (including redeemable ground rents, as defined in section 1055) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

(vi) loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans made for the improvement of any such real property,

(vii) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii) property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix) loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary,

(x) property used by the association in the conduct of the business described in subparagraph (B), and

(xi) any regular or residual interest in a REMIC, but only in the proportion which the assets of such REMIC consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC are assets described in clauses (i) through (x), the entire interest in the REMIC shall qualify.

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary. For purposes of clause (v), if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the acquisition or development of land shall be deemed to be loans

secured by an interest in residential real property if, under regulations prescribed by the Secretary, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).

(20) Employee

For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(21) Levy

The term "levy" includes the power of distraint and seizure by any means.

(22) Attorney General

The term "Attorney General" means the Attorney General of the United States.

(23) Taxable year

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary, the period for which such return is made.

(24) Fiscal year

The term "fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued

The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) Trade or business

The term "trade or business" includes the performance of the functions of a public office.

(27) Tax Court

The term "Tax Court" means the United States Tax Court.

(28) Other terms

Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) Internal Revenue Code

The term "Internal Revenue Code of 1986" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(30) United States person

The term "United States person" means—

(A) a citizen or resident of the United States,

(B) a domestic partnership,

(C) a domestic corporation,

(D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E) any trust if—

(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii) one or more United States persons have the authority to control all substantial decisions of the trust.

(31) Foreign estate or trust

(A) Foreign estate

The term "foreign estate" means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(B) Foreign trust

The term "foreign trust" means any trust other than a trust described in subparagraph (E) of paragraph (30).

(32) Cooperative bank

The term "cooperative bank" means an institution without capital stock organized and operated for mutual purposes and without profit, which—

(A) either—

(i) is an insured institution within the meaning of section 401 (a) [2] of the National Housing Act (12 U.S.C., sec. 1724 (a)), or

(ii) is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B) meets the requirements of subparagraphs (B) and (C) of paragraph (19) of this subsection (relating to definition of domestic building and loan association).

In determining whether an institution meets the requirements referred to

in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution.

(33) Regulated public utility

The term "regulated public utility" means—

(A) A corporation engaged in the furnishing or sale of—

(i) electric energy, gas, water, or sewerage disposal services, or

(ii) transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii) transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission.

(C) A corporation engaged as a common carrier

(i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Surface Transportation Board, or

(ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D) A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Secretary of Transportation.

(F) A corporation engaged in the furnishing or sale of transportation by a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49.

(G) A rail carrier subject to part A of subtitle IV of title 49, if

(i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954,

(ii) each lease is for a term of more than 20 years, and

(iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be

considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H) A common parent corporation which is a common carrier by railroad subject to part A of subtitle IV of title 49 if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term "regulated public utility" does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

[(34) Repealed. Pub. L. 98–369, div. A, title IV, §●4112(b)(11), July 18, 1984, 98 Stat. 792]

(35) Enrolled actuary

The term "enrolled actuary" means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974.

(36) Income tax return preparer

(A) In general

The term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by subtitle A or any claim for refund of tax imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) Exceptions

A person shall not be an "income tax return preparer" merely because such person—

(i) furnishes typing, reproducing, or other mechanical assistance,

(ii) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii) prepares as a fiduciary a return or claim for refund for any person, or

(iv) prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

(37) Individual retirement plan

The term "individual retirement plan" means—

(A) an individual retirement account described in section 408 (a), and

(B) an individual retirement annuity described in section 408 (b).

(38) Joint return

The term "joint return" means a single return made jointly under section 6013 by a husband and wife.

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to—

(A) jurisdiction of courts, or

(B) enforcement of summons.

(40) Indian tribal government

(A) In general

The term "Indian tribal government" means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

(B) Special rule for Alaska Natives

No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(41) TIN

The term "TIN" means the identifying number assigned to a person under section 6109.

(42) Substituted basis property

The term "substituted basis property" means property which is—

(A) transferred basis property, or

(B) exchanged basis property.

(43) Transferred basis property

The term "transferred basis property" means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property

The term "exchanged basis property" means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction

The term "nonrecognition transaction" means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A.

(46) Determination of whether there is a collective bargaining agreement

In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term "employee representatives" shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers.

(47) Executor

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.

(48) Off-highway vehicles

(A) Off-highway transportation vehicles

(i) In general A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

(ii) Determination of vehicle's design For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.

(iii) Determination of substantial limitation or impairment For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

(B) Nontransportation trailers and semitrailers

A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.

(b) Definition of resident alien and nonresident alien

(1) In general

For purposes of this title (other than subtitle B)—

(A) Resident alien

An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test Such individual meets the substantial presence test of paragraph (3).

(iii) First year election Such individual makes the election provided in paragraph (4).

(B) Nonresident alien

An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) Special rules for first and last year of residency

(A) First year of residency

(i) In general If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) Residency starting date for individuals lawfully admitted for permanent residence In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(iv) Residency starting date for individuals making first year election In the case of an individual who makes the election provided by paragraph (4) with respect to any calendar year, the residency starting date shall be the 1st day during such calendar year on which the individual is treated as a resident of the United

States under that paragraph.

(B) Last year of residency

An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if—

(i) such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii) during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii) the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded

(i) In general For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test

(A) In general

Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the "current year") if—

(i) such individual was present in the United States on at least 31 days during the calendar year, and

(ii) the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

The applicable In the case of days in: multiplier is: Current year 1 1st preceding year 1/3 2nd preceding year 1/6

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established

An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

(i) such individual is present in the United States on fewer than 183 days during the current year, and

(ii) it is established that for the current year such individual has a tax home (as defined in section 911 (d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases

Subparagraph (B) shall not apply to any individual with respect to

any current year if at any time during such year—

(i) such individual had an application for adjustment of status pending, or

(ii) such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions

An individual shall not be treated as being present in the United States on any day if—

(i) such individual is an exempt individual for such day, or

(ii) such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) First-year election

(A) An alien individual shall be deemed to meet the requirements of this subparagraph if such individual—

(i) is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the "election year"),

(ii) was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

(iii) is a resident of the United States under clause (ii) of paragraph (1)(A) with respect to the calendar year immediately following the election year, and

(iv) is both—

(I) present in the United States for a period of at least 31 consecutive days in the election year, and

(II) present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the "testing period") for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

(B) An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

(C) An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for the portion of the election year which begins on the 1st day of the earliest testing period during such year with respect to which the individual meets the requirements of clause (iv) of subparagraph (A).

(D) The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual's presence in the United States under this paragraph.

(E) An election under subparagraph (B) shall be made on the individual's tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

(F) An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary.

(5) Exempt individual defined

For purposes of this subsection—

(A) In general

An individual is an exempt individual for any day if, for such day, such individual is—

(i) a foreign government-related individual,

(ii) a teacher or trainee,

(iii) a student, or

(iv) a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274 (l)(1)(B).

(B) Foreign government-related individual

The term "foreign government-related individual" means any individual temporarily present in the United States by reason of—

(i) diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

(ii) being a full-time employee of an international organization, or

(iii) being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee

The term "teacher or trainee" means any individual—

(i) who is temporarily present in the United States under subparagraph (J) or (Q) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

(ii) who substantially complies with the requirements for being so present.

(D) Student

The term "student" means any individual—

(i) who is temporarily present in the United States—

(I) under subparagraph (F) or (M) of section 101(15) of the Immigration and Nationality Act, or

(II) as a student under subparagraph (J) or (Q) of such section 101 (15), and

(ii) who substantially complies with the requirements for being so

present.

(E) Special rules for teachers, trainees, and students

(i) Limitation on teachers and trainees An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of whose compensation is described in section 872 (b)(3), the preceding sentence shall be applied by substituting "4 calendar years" for "2 calendar years".

(ii) Limitation on students For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

(6) Lawful permanent resident

For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

(A) such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B) such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

(7) Presence in the United States

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), (C), or (D), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) Commuters from Canada or Mexico

If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points

If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(D) Crew members temporarily present

An individual who is temporarily present in the United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day unless such individual otherwise engages

in any trade or business in the United States on such day.

(8) Annual statements

The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(9) Taxable year

(A) In general

For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer

If—

(i) an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii) after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(10) Coordination with section 877

If—

(A) an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the "initial residency period"), and

(B) such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877 (b). The preceding sentence shall apply only if the tax imposed pursuant to section 877 (b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Includes and including

The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico

Where not otherwise distinctly expressed or manifestly incompatible with the

intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc.

For purposes of chapter 1—

(1) In general

A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not —

(A) the service recipient is in physical possession of the property,

(B) the service recipient controls the property,

(C) the service recipient has a significant economic or possessory interest in the property,

(D) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F) the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements

An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities

(A) In general

Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient—

(i) with respect to—

(I) the operation of a qualified solid waste disposal facility,

(II) the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

(III) the operation of a water treatment works facility, and

(ii) which purports to be a service contract,

shall be treated as a service contract.

(B) Qualified solid waste disposal facility

For purposes of subparagraph (A), the term "qualified solid waste disposal facility" means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed

at such facility is collected from the general public.

(C) Cogeneration facility

For purposes of subparagraph (A), the term "cogeneration facility" means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility

For purposes of subparagraph (A), the term "alternative energy facility" means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility

For purposes of subparagraph (A), the term "water treatment works facility" means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

(4) Paragraph (3) not to apply in certain cases

(A) In general

Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, or water treatment works facility used under a contract or arrangement if—

(i) the service recipient (or a related entity) operates such facility,

(ii) the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

(iii) the service recipient (or a related entity) receives any significant financial benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

(iv) the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

For purposes of this paragraph, the term "related entity" has the same meaning as when used in section 168 (h).

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract

For purposes of subparagraph (A), there shall not be taken into account—

(i) any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii) any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events

(i) Temporary shut-downs, etc. For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing

This subsection shall not apply to any property described in clause (i), (ii), (iii), or (iv) of section 1250 (a)(1)(B) (relating to low-income housing) if—

(A) such property is operated by or for an organization described in paragraph (3) or (4) of section 501 (c), and

(B) at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167 (k)(3)(B)) (as in effect on the day before the date of the enactment of the Revenue Reconcilation [3] Act of 1990).

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection.

(f) Use of related persons or pass-thru entities

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with—

(1) the linking of borrowing to investment, or

(2) diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness

For purposes of subtitle A, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Motor vehicle operating leases

(1) In general

For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause —

(A) such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

(B) the lessee shall not be treated as the owner of the property

subject to an agreement during any period such agreement is in effect.

(2) Qualified motor vehicle operating agreement defined

For purposes of this subsection—

(A) In general

The term "qualified motor vehicle operating agreement" means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of subparagraphs (B), (C), and (D) of this paragraph.

(B) Minimum liability of lessor

An agreement meets the requirements of this subparagraph if under such agreement the sum of—

(i) the amount the lessor is personally liable to repay, and

(ii) the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(C) Certification by lessee; notice of tax ownership

An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee—

(i) under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

(ii) which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(D) Lessor must have no knowledge that certification is false

An agreement meets the requirements of this subparagraph if the lessor does not know that the certification described in subparagraph (C)(i) is false.

(3) Terminal rental adjustment clause defined

(A) In general

For purposes of this subsection, the term "terminal rental adjustment clause" means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(B) Special rule for lessee dealers

The term "terminal rental adjustment clause" also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined

price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A).

(i) Taxable mortgage pools

(1) Treated as separate corporations

A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

(2) Taxable mortgage pool defined

For purposes of this title—

(A) In general

Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC) if—

(i) substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),

(ii) such entity is the obligor under debt obligations with 2 or more maturities, and

(iii) under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

(B) Portion of entities treated as pools

Any portion of an entity which meets the definition of subparagraph (A) shall be treated as a taxable mortgage pool.

(C) Exception for domestic building and loan

Nothing in this subsection shall be construed to treat any domestic building and loan association (or portion thereof) as a taxable mortgage pool.

(D) Treatment of certain equity interests

To the extent provided in regulations, equity interest of varying classes which correspond to maturity classes of debt shall be treated as debt for purposes of this subsection.

(3) Treatment of certain REIT's

If—

(A) a real estate investment trust is a taxable mortgage pool, or

(B) a qualified REIT subsidiary (as defined in section 856(i)(2)) of a real estate investment trust is a taxable mortgage pool,

under regulations prescribed by the Secretary, adjustments similar to the adjustments provided in section 860E (d) shall apply to the shareholders of such real estate investment trust.

(j) Tax treatment of Federal Thrift Savings Fund

(1) In general

For purposes of this title—

(A) the Thrift Savings Fund shall be treated as a trust described in section 401 (a) which is exempt from taxation under section 501 (a);

(B) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(C) subject to section 401 (k)(4)(B) and any dollar limitation on the application of section 402 (e)(3), contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code, and section 8351 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(2) Nondiscrimination requirements

Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401 (k) or to matching contributions (as described in section 401 (m)), so long as it meets the requirements of this section.

(3) Coordination with Social Security Act

Paragraph (1) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term "wages" for the purposes of section 209 of the Social Security Act or section 3121 (a) of this title.

(4) Definitions

For purposes of this subsection, the terms "Member", "employee", and "Thrift Savings Fund" shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code.

(5) Coordination with other provisions of law

No provision of law not contained in this title shall apply for purposes of determining the treatment under this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund.

(k) Treatment of certain amounts paid to charity

In the case of any payment which, except for section 501(b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170 (c)—

(1) such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2) no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate

or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

(l) Regulations relating to conduit arrangements

The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

(m) Designation of contract markets

Any designation by the Commodity Futures Trading Commission of a contract market which could not have been made under the law in effect on the day before the date of the enactment of the Commodity Futures Modernization Act of 2000 shall apply for purposes of this title except to the extent provided in regulations prescribed by the Secretary.

(n) Special rules for determining when an individual is no longer a United States citizen or long-term resident

An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

(2) provides a statement in accordance with section 6039G.

(o) Cross references

(1) Other definitions

For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.

(2) Plural as including singular, section 1.

(3) Masculine as including feminine, section 1.

(4) Officer, section 1.

(5) Oath as including affirmation, section 1.

(6) County as including parish, section 2.

(7) Vessel as including all means of water transportation, section 3.

(8) Vehicle as including all means of land transportation, section 4.

(9) Company or association as including successors and assigns, section 5.

(2) Effect of cross references

For effect of cross references in this title, see section 7806 (a).

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[1] See References in Text note below.

[2] See References in Text note below.

[3] So in original. Probably should be "Reconciliation".

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Sec. 6001. - Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a)

Sec. 6011. - General requirement of return, statement, or list

(a) General rule

When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) Identification of taxpayer

The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) Returns, etc., of DISCS and former DISCS and FSC's and former FSC's

(1) Records and information

A DISC or former DISC or a FSC or former FSC shall for the taxable year -

(A)

furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B)

keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns

A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) Authority to require information concerning section 912 allowances

The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations requiring returns on magnetic media, etc.

(1) In general

The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) Requirements of regulations

In prescribing regulations under paragraph (1), the Secretary -

(A)

shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B)

shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.

Notwithstanding the preceding sentence, the Secretary shall require partnerships having more than 100 partners to file returns on magnetic media.

(f) Promotion of electronic filing

(1) In general

The Secretary is authorized to promote the benefits of and encourage the use of electronic tax administration

programs, as they become available, through the use of mass communications and other means.

(2) Incentives

The Secretary may implement procedures to provide for the payment of appropriate incentives for electronically filed returns.

(g)

Income, estate, and gift taxes

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C

Sec. 7701. - Definitions

(a)

When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof -

(1) Person

The term ''person'' shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner

The term ''partnership'' includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term ''partner'' includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation

The term ''corporation'' includes associations, joint-stock companies, and insurance companies.

(4) Domestic

The term ''domestic'' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

(5) Foreign

The term ''foreign'' when applied to a corporation or partnership means a corporation or partnership which is

not domestic.

(6) Fiduciary

The term ''fiduciary'' means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock

The term ''stock'' includes shares in an association, joint-stock company, or insurance company.

(8) Shareholder

The term ''shareholder'' includes a member in an association, joint-stock company, or insurance company.

(9) United States

The term ''United States'' when used in a geographical sense includes only the States and the District of Columbia.

(10) State

The term ''State'' shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) Secretary of the Treasury and Secretary

(A) Secretary of the Treasury

The term ''Secretary of the Treasury'' means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary

The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(12) Delegate

(A) In general

The term ''or his delegate'' -

(i)

when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the

Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii)

when used with reference to any other official of the United States, shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa

The term ''delegate,'' in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner

The term ''Commissioner'' means the Commissioner of Internal Revenue.

(14) Taxpayer

The term ''taxpayer'' means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States

The term ''military or naval forces of the United States'' and the term ''Armed Forces of the United States'' each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent

The term ''withholding agent'' means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

(17) Husband and wife

As used in sections 152(b)(4), 682, and 2516, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term ''wife'' shall be read ''former wife'' and the term ''husband'' shall be read ''former husband''; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term ''husband'' shall be read ''wife'' and the term ''wife'' shall be read ''husband.''

(18) International organization

The term ''international organization'' means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f).

(19) Domestic building and loan association

The term ''domestic building and loan association'' means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association -

(A)

which either

(i)

is an insured institution within the meaning of section 401(a) [1] of the National Housing Act (12 U.S.C., sec. 1724(a)), or

(ii)

is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B)

the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C)

at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of -

(i)

cash,

(ii)

obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103,

(iii)

certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv)

loans secured by a deposit or share of a member,

(v)

loans (including redeemable ground rents, as defined in section 1055) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

(vi)

loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans

made for the improvement of any such real property,

(vii)

loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii)

property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix)

loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary,

(x)

property used by the association in the conduct of the business described in subparagraph (B), and

(xi)

any regular or residual interest in a REMIC, and any regular interest in a FASIT, but only in the proportion which the assets of such REMIC or FASIT consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC or FASIT are assets described in clauses (i) through (x), the entire interest in the REMIC or FASIT shall qualify.

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary. For purposes of clause (v), if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the

acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).

(20) Employee

For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term ''employee'' shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(21) Levy

The term ''levy'' includes the power of distraint and seizure by any means.

(22) Attorney General

The term ''Attorney General'' means the Attorney General of the United States.

(23) Taxable year

The term ''taxable year'' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. ''Taxable year'' means, in the case of a return

made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary, the period for which such return is made.

(24) Fiscal year

The term ''fiscal year'' means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued

The terms ''paid or incurred'' and ''paid or accrued'' shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) Trade or business

The term ''trade or business'' includes the performance of the functions of a public office.

(27) Tax Court

The term ''Tax Court'' means the United States Tax Court.

(28) Other terms

Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) Internal Revenue Code

The term ''Internal Revenue Code of 1986'' means this title, and the term ''Internal Revenue Code of 1939'' means the Internal Revenue Code enacted February 10, 1939, as amended.

(30) United States person

The term ''United States person'' means -

(A)

a citizen or resident of the United States,

(B)

a domestic partnership,

(C)

a domestic corporation,

(D)

any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E)

any trust if -

(i)

a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii)

one or more United States persons have the authority to control all substantial decisions of the trust.

(31) Foreign estate or trust

(A) Foreign estate

The term ''foreign estate'' means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(B) Foreign trust

The term ''foreign trust'' means any trust other than a trust described in subparagraph (E) of paragraph (30).

(32) Cooperative bank

The term ''cooperative bank'' means an institution without capital stock organized and operated for mutual purposes and without profit, which -

(A)

either -

(i)

is an insured institution within the meaning of section 401(a) [2] of the National Housing Act (12

U.S.C., sec. 1724(a)), or

(ii)

is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B)

meets the requirements of subparagraphs (B) and (C) of paragraph (19) of this subsection (relating to definition of domestic building and loan association).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution.

(33) Regulated public utility

The term ''regulated public utility'' means -

(A)

A corporation engaged in the furnishing or sale of -

(i)

electric energy, gas, water, or sewerage disposal services, or

(ii)

transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii)

transportation (not included in clause (ii)) by motor vehicle - if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B)

A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission.

(C)

A corporation engaged as a common carrier

(i)

in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Surface Transportation Board, or

(ii)

in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D)

A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E)

A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Secretary of Transportation.

(F)

A corporation engaged in the furnishing or sale of transportation by a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49.

(G)

A rail carrier subject to part A of subtitle IV of title 49, if

(i)

substantially all of its railroad properties have been

leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954,

(ii)

each lease is for a term of more than 20 years, and

(iii)

at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H)

A common parent corporation which is a common carrier by railroad subject to part A of subtitle IV of title 49 if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term ''regulated public utility'' does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that

(i)

its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and

(ii)

the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

(34)

Repealed. Pub. L. 98-369, div. A, title IV, Sec. 4112 (b)(11), July 18, 1984, 98 Stat. 792)

(35) Enrolled actuary

The term ''enrolled actuary'' means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974.

(36) Income tax return preparer

(A) In general

The term ''income tax return preparer'' means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by subtitle A or any claim for refund of tax imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) Exceptions

A person shall not be an ''income tax return preparer'' merely because such person -

(i)

furnishes typing, reproducing, or other mechanical assistance,

(ii)

prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii)

prepares as a fiduciary a return or claim for refund for any person, or

(iv)

prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

(37) Individual retirement plan

The term ''individual retirement plan'' means -

(A)

an individual retirement account described in section 408(a), and

(B)

an individual retirement annuity described in section 408(b).

(38) Joint return

The term ''joint return'' means a single return made jointly under section 6013 by a husband and wife.

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to -

(A)

jurisdiction of courts, or

(B)

enforcement of summons.

(40) Indian tribal government

(A) In general

The term ''Indian tribal government'' means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

(B) Special rule for Alaska Natives

No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(41) TIN

The term ''TIN'' means the identifying number assigned to a person under section 6109.

(42) Substituted basis property

The term ''substituted basis property'' means property which is -

(A)

transferred basis property, or

(B)

exchanged basis property.

(43) Transferred basis property

The term ''transferred basis property'' means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property

The term ''exchanged basis property'' means property

having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction

The term ''nonrecognition transaction'' means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A.

(46) Determination of whether there is a collective bargaining agreement

In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term ''employee representatives'' shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers.

(b) Definition of resident alien and nonresident alien

(1) In general

For purposes of this title (other than subtitle B) -

(A) Resident alien

An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence

Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test

Such individual meets the substantial presence test of paragraph (3).

(iii) First year election

Such individual makes the election provided in paragraph (4).

(B) Nonresident alien

An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) Special rules for first and last year of residency

(A) First year of residency

(i) In general

If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) Residency starting date for individuals lawfully admitted for permanent residence

In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test

In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(iv) Residency starting date for individuals making first year election

In the case of an individual who makes the election provided by paragraph (4) with respect to any calendar year, the residency starting date shall be

the 1st day during such calendar year on which the individual is treated as a resident of the United States under that paragraph.

(B) Last year of residency

An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if -

(i)

such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii)

during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii)

the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded

(i) In general

For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded

Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test

(A) In general

Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the ''current year'') if -

(i)

such individual was present in the United States on at least 31 days during the calendar year, and

(ii)

the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days: The applicable In the case of days in: multiplier is: Current year 1 1st preceding year 1/3 2nd preceding year 1/6

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established

An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if -

(i)

such individual is present in the United States on fewer than 183 days during the current year, and

(ii)

it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases

Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year -

(i)

such individual had an application for adjustment of status pending, or

(ii)

such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions

An individual shall not be treated as being present in the United States on any day if -

(i)

such individual is an exempt individual for such day, or

(ii)

such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) First -year election

(A)

An alien individual shall be deemed to meet the requirements of this subparagraph if such individual -

(i)

is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the ''election year''),

(ii)

was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

(iii)

is a resident of the United States under clause (ii) of paragraph (1)(A) with respect to the calendar year immediately following the election year, and

(iv)

is both -

(I)

present in the United States for a period of at least 31 consecutive days in the election year, and

(II)

present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the ''testing period'') for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

(B)

An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

(C)

An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for the portion of the election year which begins on the 1st day of the earliest testing period during such year with respect to which the individual meets the requirements of clause (iv) of subparagraph (A).

(D)

The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual's presence in the United States under this paragraph.

(E)

An election under subparagraph (B) shall be made on the individual's tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

(F)

An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary.

(5) Exempt individual defined

For purposes of this subsection -

(A) In general

An individual is an exempt individual for any day if, for such day, such individual is -

(i)

a foreign government-related individual,

(ii)

a teacher or trainee,

(iii)

a student, or

(iv)

a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274(l)(1)(B).

(B) Foreign government-related individual

The term ''foreign government-related individual'' means any individual temporarily present in the United States by reason of -

(i)

diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

(ii)

being a full-time employee of an international organization, or

(iii)

being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee

The term ''teacher or trainee'' means any individual -

(i)

who is temporarily present in the United States under subparagraph (J) or (Q) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

(ii)

who substantially complies with the requirements for being so present.

(D) Student

The term ''student'' means any individual -

(i)

who is temporarily present in the United States -

(I)

under subparagraph (F) or (M) of section 101 (15) of the Immigration and Nationality Act, or

(II)

as a student under subparagraph (J) or (Q) of such section 101(15), and (ii) who substantially complies with the requirements for being so present.

(E) Special rules for teachers, trainees, and students

(i) Limitation on teachers and trainees

An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of whose compensation is described in section 872(b) (3), the preceding sentence shall be applied by substituting ''4 calendar years'' for ''2 calendar years''.

(ii) Limitation on students

For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual

does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

(6) Lawful permanent resident

For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if -

(A)

such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B)

such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

(7) Presence in the United States

For purposes of this subsection -

(A) In general

Except as provided in subparagraph (B), (C), or (D), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) Commuters from Canada or Mexico

If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points

If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(D) Crew members temporarily present

An individual who is temporarily present in the

United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day unless such individual otherwise engages in any trade or business in the United States on such day.

(8) Annual statements

The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(9) Taxable year

(A) In general

For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer

If -

(i)

an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii)

after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(10) Coordination with section 877

If -

(A)

an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the ''initial residency period''), and

(B)

such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b). The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Includes and including

The terms ''includes'' and ''including'' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico

Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc.

For purposes of chapter 1 -

(1) In general

A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not -

(A)

the service recipient is in physical possession of the property,

(B)

the service recipient controls the property,

(C)

the service recipient has a significant economic or possessory interest in the property,

(D)

the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E)

the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F)

the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements

An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities

(A) In general

Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient -

(i)

with respect to -

(I)

the operation of a qualified solid waste disposal facility,

(II)

the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

(III)

the operation of a water treatment works facility, and

(ii)

which purports to be a service contract,

shall be treated as a service contract.

(B) Qualified solid waste disposal facility

For purposes of subparagraph (A), the term ''qualified solid waste disposal facility'' means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

(C) Cogeneration facility

For purposes of subparagraph (A), the term ''cogeneration facility'' means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility

For purposes of subparagraph (A), the term ''alternative energy facility'' means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility

For purposes of subparagraph (A), the term ''water treatment works facility'' means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

(4) Paragraph (3) not to apply in certain cases

(A) In general

Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, or water treatment works facility used under a contract or arrangement if -

(i)

the service recipient (or a related entity) operates such facility,

(ii)

the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

(iii)

the service recipient (or a related entity) receives any significant financial benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

(iv)

the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

For purposes of this paragraph, the term ''related entity'' has the same meaning as when used in section 168(h).

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract

For purposes of subparagraph (A), there shall not be taken into account -

(i)

any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii)

any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events

(i) Temporary shut-downs, etc.

For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs

For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing

This subsection shall not apply to any property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing) if -

(A)

such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c), and

(B)

at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B)) (as in effect on the day before the date of the enactment of the Revenue Reconcilation [3] Act of 1990). ''Reconciliation''.

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection.

(f) Use of related persons or pass-thru entities

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with -

(1)

the linking of borrowing to investment, or

(2)

diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness

For purposes of subtitle A, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Motor vehicle operating leases

(1) In general

For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause -

(A)

such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

(B)

the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

(2) Qualified motor vehicle operating agreement defined

For purposes of this subsection -

(A) In general

The term ''qualified motor vehicle operating agreement'' means any agreement with respect to a motor vehicle (including a trailer) which meets the

requirements of subparagraphs (B), (C), and (D) of this paragraph.

(B) Minimum liability of lessor

An agreement meets the requirements of this subparagraph if under such agreement the sum of -

(i)

the amount the lessor is personally liable to repay, and

(ii)

the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(C) Certification by lessee; notice of tax ownership

An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee -

(i)

under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

(ii)

which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(D) Lessor must have no knowledge that certification is false

An agreement meets the requirements of this subparagraph if the lessor does not know that the certification described in subparagraph (C)(i) is false.

(3) Terminal rental adjustment clause defined

(A) In general

For purposes of this subsection, the term ''terminal rental adjustment clause'' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(B) Special rule for lessee dealers

The term ''terminal rental adjustment clause'' also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A).

(i) Taxable mortgage pools

(1) Treated as separate corporations

A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

(2) Taxable mortgage pool defined

For purposes of this title -

(A) In general

Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC or a FASIT) if -

(i)

substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),

(ii)

such entity is the obligor under debt obligations with 2 or more maturities, and

(iii)

under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

(B) Portion of entities treated as pools

Any portion of an entity which meets the definition of subparagraph (A) shall be treated as a taxable mortgage pool.

(C) Exception for domestic building and loan

Nothing in this subsection shall be construed to treat any domestic building and loan association (or portion thereof) as a taxable mortgage pool.

(D) Treatment of certain equity interests

To the extent provided in regulations, equity interest of varying classes which correspond to maturity classes of debt shall be treated as debt for purposes of this subsection.

(3) Treatment of certain REIT's

If -

(A)

a real estate investment trust is a taxable mortgage pool, or

(B)

a qualified REIT subsidiary (as defined in section 856(i)(2)) of a real estate investment trust is a taxable mortgage pool,

under regulations prescribed by the Secretary, adjustments similar to the adjustments provided in section 860E(d) shall apply to the shareholders of such real estate investment trust.

(j) Tax treatment of Federal Thrift Savings Fund

(1) In general

For purposes of this title -

(A)

the Thrift Savings Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

(B)

any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(C)

subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(e)(3), contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code, and section 8351 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(2) Nondiscrimination requirements

Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) or to matching contributions (as described in section 401(m)), so long as it meets the requirements of this section.

(3) Coordination with Social Security Act

Paragraph (1) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term ''wages'' for the purposes of section 209 of the Social Security Act or section 3121(a) of this title.

(4) Definitions

For purposes of this subsection, the terms ''Member'', ''employee'', and ''Thrift Savings Fund'' shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code.

(5) Coordination with other provisions of law

No provision of law not contained in this title shall apply for purposes of determining the treatment under

this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund.

(k) Treatment of certain amounts paid to charity

In the case of any payment which, except for section 501 (b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c) -

(1)

such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2)

no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

(l) Regulations relating to conduit arrangements

The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

(m) Designation of contract markets

Any designation by the Commodity Futures Trading Commission of a contract market which could not have been made under the law in effect on the day before the date of the enactment of the Commodity Futures Modernization Act of 2000 shall apply for purposes of this title except to the extent provided in regulations prescribed by the Secretary.

(n) Cross references

(1) Other definitions For other definitions, see the following sections of Title 1

For other definitions, see the following sections of

Title 1 of the United States Code:

(1)

Singular as including plural, section 1.

(2)

Plural as including singular, section 1.

(3)

Masculine as including feminine, section 1.

(4)

Officer, section 1.

(5)

Oath as including affirmation, section 1.

(6)

County as including parish, section 2.

(7)

Vessel as including all means of water transportation, section 3.

(8)

Vehicle as including all means of land transportation, section 4.

(9)

Company or association as including successors and assigns, section 5.

(2) Effect of cross references For effect of cross references in this title, see section

For effect of cross references in this title, see section 7806(a)

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[1] See References in Text note below.

[2] See References in Text note below.

[3] So in original. Probably should be

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§ 6012. Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)

(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual—

(i) who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2 (a)), is not a head of a household (as defined in section 2 (b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii) who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii) who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual, or

(iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint

return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151 (c).

(B) The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63 (c)(3)) in the case of an individual entitled to such deduction by reason of section 63 (f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63 (f)(1).

(C) The exception under subparagraph (A) shall not apply to any individual—

(i) who is described in section 63 (c)(5) and who has—

(I) income (other than earned income) in excess of the sum of the amount in effect under section 63 (c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

(II) total gross income in excess of the standard deduction, or

(ii) for whom the standard deduction is zero under section 63 (c)(6).

(D) For purposes of this subsection—

(i) The terms "standard deduction", "basic standard deduction" and "additional standard deduction" have the respective meanings given such terms by section 63 (c).

(ii) The term "exemption amount" has the meaning given such term by section 151 (d). In the case of an individual described in section 151 (d)(2), the exemption amount shall be zero.

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income;

(5) Every estate or trust of which any beneficiary is a nonresident alien;

(6) Every political organization (within the meaning of section 527 (e)(1)), and every fund treated under section 527 (g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527 (c)(1)) for the taxable year; and [1]

(7) Every homeowners association (within the meaning of section 528 (c)(1)) which has homeowners association taxable income (within the meaning of section 528 (d)) for the taxable year.[1]

(8) Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance

payment of earned income credit).[1]

(9) Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63 (c)(2)(D).[1], [2]

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) Returns made by fiduciaries and receivers

(1) Returns of decedents

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) Persons under a disability

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) Receivers, trustees and assignees for corporations

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) Returns of estates and trusts

Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

(5) Joint fiduciaries

Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(6) IRA share of partnership income

In the case of a trust which is exempt from taxation under section 408 (e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

(c) Certain income earned abroad or from sale of residence

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

(d) Tax-exempt interest required to be shown on return

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

(e) Consolidated returns

For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

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[1] So in original.

[2] See References in Text note below.

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Sec. 6012. - Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)

(A)

Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual -

(i)

who is not married (determined by applying section 7703), is not a surviving spouse (as defined in section 2(a)), is not a head of a household (as defined in section 2(b)), and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(ii)

who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual,

(iii)

who is a surviving spouse (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an

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individual, or

(iv)

who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).

(B)

The amount specified in clause (i), (ii), or (iii) of subparagraph (A) shall be increased by the amount of 1 additional standard deduction (within the meaning of section 63(c)(3)) in the case of an individual entitled to such deduction by reason of section 63(f)(1)(A) (relating to individuals age 65 or more), and the amount specified in clause (iv) of subparagraph (A) shall be increased by the amount of the additional standard deduction for each additional standard deduction to which the individual or his spouse is entitled by reason of section 63(f)(1).

(C)

The exception under subparagraph (A) shall not apply to any individual -

(i)

who is described in section 63(c)(5) and who has -

(I)

income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or

(II)

total gross income in excess of the standard deduction, or

(ii)

for whom the standard deduction is zero under section 63(c)(6).

(D)

For purposes of this subsection -

(i)

The terms ''standard deduction'', ''basic standard deduction'' and ''additional standard deduction'' have the respective meanings given such terms by section 63(c).

(ii)

The term ''exemption amount'' has the meaning given such term by section 151(d). In the case of an individual described in section 151(d)(2), the exemption amount shall be zero.

(2)

Every corporation subject to taxation under subtitle A;

(3)

Every estate the gross income of which for the taxable year is $600 or more;

(4)

Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income;

(5)

Every estate or trust of which any beneficiary is a nonresident alien;

(6)

Every political organization (within the meaning of section 527(e)(1)), and every fund treated under section 527(g) as if it constituted a political organization, which has political organization taxable income (within the meaning of section 527(c)(1)) for the taxable year or which has gross receipts of $25,000 or more for the taxable year (other than an organization to which section 527 applies solely by reason of subsection (f)(1) of such section); and [1] (FOOTNOTE 1) So in original.

(7)

Every homeowners association (within the meaning of section 528(c)(1)) which has homeowners association taxable income (within the meaning of section 528(d)) for the taxable year.

(8)

Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit). (FOOTNOTE 1)

(9)

Every estate of an individual under chapter 7 or 11 of title 11 of the United States Code (relating to bankruptcy) the gross income of which for the taxable year is not less than the sum of the exemption amount plus the basic standard deduction under section 63(c)(2)(D). [1] except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) Returns made by fiduciaries and receivers

(1) Returns of decedents

If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) Persons under a disability

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) Receivers, trustees and assignees for corporations

In a case where a receiver, trustee in a case under title 11 of the United States Code, or assignee, by order of a court of competent jurisdiction, by operation of law

or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) Returns of estates and trusts

Returns of an estate, a trust, or an estate of an individual under chapter 7 or 11 of title 11 of the United States Code shall be made by the fiduciary thereof.

(5) Joint fiduciaries

Under such regulations as the Secretary may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(6) IRA share of partnership income

In the case of a trust which is exempt from taxation under section 408(e), for purposes of this section, the trust's distributive share of items of gross income and gain of any partnership to which subchapter C or D of chapter 63 applies shall be treated as equal to the trust's distributive share of the taxable income of such partnership.

(c) Certain income earned abroad or from sale of residence

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to gain from sale of principal residence) and without regard to the exclusion provided for in section 911 (relating to citizens or residents of the United States living abroad).

(d) Tax-exempt interest required to be shown on return

Every person required to file a return under this section for the taxable year shall include on such return the amount of interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1.

(e)

Consolidated returns

For provisions relating to consolidated returns by affiliated corporations, see chapter 6

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§ 1. Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of—

(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2 (a)),

a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $36,900	15% of taxable income.
Over $36,900 but not over $89,150	$5,535, plus 28% of the excess over $36,900.
Over $89,150 but not over $140,000	$20,165, plus 31% of the excess over $89,150.
Over $140,000 but not over $250,000	$35,928.50, plus 36% of the excess over $140,000.
Over $250,000	$75,528.50, plus 39.6% of the excess over $250,000.

(b) Heads of households

There is hereby imposed on the taxable income of every head of a household (as defined in section 2 (b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $29,600	15% of taxable income.
Over $29,600 but not over $76,400	$4,440, plus 28% of the excess over $29,600.
Over $76,400 but not over $127,500	$17,544, plus 31% of the excess over $76,400.
Over $127,500 but not over $250,000	$33,385, plus 36% of the excess over $127,500.
Over $250,000	$77,485, plus 39.6% of the excess over $250,000.

(c) Unmarried individuals (other than surviving spouses and heads of households)

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2 (a) or the head of a household as defined in section 2 (b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $22,100	15% of taxable income.
Over $22,100 but not over $53,500	$3,315, plus 28% of the excess over $22,100.
Over $53,500 but not over $115,000	$12,107, plus 31% of the excess over $53,500.
Over $115,000 but not over $250,000	$31,172, plus 36% of the excess over $115,000.
Over $250,000	$79,772, plus 39.6% of the excess over $250,000.

(d) Married individuals filing separate returns

There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $18,450	15% of taxable income.
Over $18,450 but not over $44,575	$2,767.50, plus 28% of the excess over $18,450.
Over $44,575 but not over $70,000	$10,082.50, plus 31% of the excess over $44,575.
Over $70,000 but not over $125,000	$17,964.25, plus 36% of the excess over $70,000.
Over $125,000	$37,764.25, plus 39.6% of the excess over $125,000.

(e) Estates and trusts

There is hereby imposed on the taxable income of—

(1) every estate, and

(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $1,500	15% of taxable income.
Over $1,500 but not over $3,500	$225, plus 28% of the excess over $1,500.
Over $3,500 but not over $5,500	$785, plus 31% of the excess over $3,500.
Over $5,500 but not over $7,500	$1,405, plus 36% of the excess over $5,500.
Over $7,500	$2,125, plus 39.6% of the excess over $7,500.

(f) Phaseout of marriage penalty in 15-percent bracket; adjustments in tax tables so that inflation will not result in tax increases

(1) In general

Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) Method of prescribing tables

The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed—

(A) except as provided in paragraph (8), by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) Cost-of-living adjustment

For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1992.

(4) CPI for any calendar year

For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(5) Consumer Price Index

For purposes of paragraph (4), the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

(6) Rounding

(A) In general

If any increase determined under paragraph (2)(A), section 63 (c)(4), section 68(b)(2) or section 151 (d)(4) is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

(B) Table for married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to sections 63 (c)(4) and 151 (d)(4)(A)) shall be applied by substituting "$25" for "$50" each place it appears.

(7) Special rule for certain brackets

(A) Calendar year 1994

In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

(B) Later calendar years

In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting "1993" for "1992".

(8) Elimination of marriage penalty in 15-percent bracket

With respect to taxable years beginning after December 31, 2003, in prescribing the tables under paragraph (1)—

(A) the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (a) (and the minimum taxable income in the next higher taxable income bracket in such table) shall be 200 percent of the maximum taxable income in the 15-percent rate bracket in the table contained in subsection (c) (after any other adjustment under this subsection), and

(B) the comparable taxable income amounts in the table contained in subsection (d) shall be 1/2 of the amounts determined under subparagraph (A).

(g) Certain unearned income of minor children taxed as if parent's income

(1) In general

In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of—

(A) the tax imposed by this section without regard to this subsection, or

(B) the sum of—

(i) the tax which would be imposed by this section if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(ii) such child's share of the allocable parental tax.

(2) Child to whom subsection applies

This subsection shall apply to any child for any taxable year if—

(A) such child has not attained age 14 before the close of the taxable year, and

(B) either parent of such child is alive at the close of the taxable year.

(3) Allocable parental tax

For purposes of this subsection—

(A) In general

The term "allocable parental tax" means the excess of—

(i) the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

(ii) the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(B) Child's share

A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

(C) Special rule where parent has different taxable year

Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(4) Net unearned income

For purposes of this subsection—

(A) In general

The term "net unearned income" means the excess of—

(i) the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section

911 (d)(2)), over

(ii) the sum of—

(I) the amount in effect for the taxable year under section 63 (c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

(II) the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

(B) Limitation based on taxable income

The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(5) Special rules for determining parent to whom subsection applies

For purposes of this subsection, the parent whose taxable income shall be taken into account shall be—

(A) in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152 (e)) of the child, and

(B) in the case of married individuals filing separately, the individual with the greater taxable income.

(6) Providing of parent's TIN

The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

(7) Election to claim certain unearned income of child on parent's return

(A) In general

If—

(i) any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(ii) such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

(iii) no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv) the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

(B) Income included on parent's return

In the case of a parent making the election under this paragraph—

(i) the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

(ii) the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of—

(I) the amount determined under this section after the application of clause (i), plus

(II) for each such child, 10 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and

(iii) any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

(C) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.

(h) Maximum capital gains rate

(1) In general

If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of—

(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

(i) taxable income reduced by the net capital gain; or

(ii) the lesser of—

(I) the amount of taxable income taxed at a rate below 25 percent; or

(II) taxable income reduced by the adjusted net capital gain;

(B) 5 percent (0 percent in the case of taxable years beginning after 2007) of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of—

(i) the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 25 percent, over

(ii) the taxable income reduced by the adjusted net capital gain;

(C) 15 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

(D) 25 percent of the excess (if any) of—

(i) the unrecaptured section 1250 gain (or, if less, the net capital gain (determined without regard to paragraph (11))), over

(ii) the excess (if any) of—

(I) the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

(II) taxable income; and

(E) 28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

(2) Net capital gain taken into account as investment income

For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163 (d)(4)(B)(iii).

(3) Adjusted net capital gain

For purposes of this subsection, the term "adjusted net capital gain" means the sum of—

(A) net capital gain (determined without regard to paragraph (11)) reduced (but not below zero) by the sum of—

(i) unrecaptured section 1250 gain, and

(ii) 28-percent rate gain, plus

(B) qualified dividend income (as defined in paragraph (11)).

(4) 28-percent rate gain

For purposes of this subsection, the term "28-percent rate gain" means the excess (if any) of—

(A) the sum of—

(i) collectibles gain; and

(ii) section 1202 gain, over

(B) the sum of—

(i) collectibles loss;

(ii) the net short-term capital loss; and

(iii) the amount of long-term capital loss carried under section 1212 (b)(1)(B) to the taxable year.

(5) Collectibles gain and loss

For purposes of this subsection—

(A) In general

The terms "collectibles gain" and "collectibles loss" mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408 (m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

(B) Partnerships, etc.

For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to

the rules of section 751 shall apply for purposes of the preceding sentence.

(6) Unrecaptured section 1250 gain

For purposes of this subsection—

(A) In general

The term "unrecaptured section 1250 gain" means the excess (if any) of—

(i) the amount of long-term capital gain (not otherwise treated as ordinary income) which would be treated as ordinary income if section 1250 (b)(1) included all depreciation and the applicable percentage under section 1250 (a) were 100 percent, over

(ii) the excess (if any) of—

(I) the amount described in paragraph (4)(B); over

(II) the amount described in paragraph (4)(A).

(B) Limitation with respect to section 1231 property

The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231 (a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231 (c)(3)) for such year.

(7) Section 1202 gain

For purposes of this subsection, the term "section 1202 gain" means the excess of—

(A) the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202 (a), over

(B) the gain excluded from gross income under section 1202.

(8) Coordination with recapture of net ordinary losses under section 1231

If any amount is treated as ordinary income under section 1231 (c), such amount shall be allocated among the separate categories of net section 1231 gain (as defined in section 1231 (c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

(9) Regulations

The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

(10) Pass-thru entity defined

For purposes of this subsection, the term "pass-thru entity" means—

(A) a regulated investment company;

(B) a real estate investment trust;

(C) an S corporation;

(D) a partnership;

(E) an estate or trust;

(F) a common trust fund; and

(G) a qualified electing fund (as defined in section 1295).

(11) Dividends taxed as net capital gain

(A) In general

For purposes of this subsection, the term "net capital gain" means net capital gain (determined without regard to this paragraph) increased by qualified dividend income.

(B) Qualified dividend income

For purposes of this paragraph—

(i) In general The term "qualified dividend income" means dividends received during the taxable year from—

(I) domestic corporations, and

(II) qualified foreign corporations.

(ii) Certain dividends excluded Such term shall not include—

(I) any dividend from a corporation which for the taxable year of the corporation in which the distribution is made, or the preceding taxable year, is a corporation exempt from tax under section 501 or 521,

(II) any amount allowed as a deduction under section 591 (relating to deduction for dividends paid by mutual savings banks, etc.), and

(III) any dividend described in section 404 (k).

(iii) Coordination with section 246 (c) Such term shall not include any dividend on any share of stock—

(I) with respect to which the holding period requirements of section 246 (c) are not met (determined by substituting in section 246 (c) "60 days" for "45 days" each place it appears and by substituting "121-day period" for "91-day period"), or

(II) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(C) Qualified foreign corporations

(i) In general Except as otherwise provided in this paragraph, the term "qualified foreign corporation" means any foreign corporation if—

(I) such corporation is incorporated in a possession of the United States, or

(II) such corporation is eligible for benefits of a comprehensive income tax treaty with the United States which the Secretary determines is satisfactory for purposes of this paragraph and which includes an exchange of information program.

(ii) Dividends on stock readily tradable on United States securities market A foreign corporation not otherwise treated as a qualified foreign corporation under clause (i) shall be so treated with

respect to any dividend paid by such corporation if the stock with respect to which such dividend is paid is readily tradable on an established securities market in the United States.

(iii) Exclusion of dividends of certain foreign corporations Such term shall not include any foreign corporation which for the taxable year of the corporation in which the dividend was paid, or the preceding taxable year, is a passive foreign investment company (as defined in section 1297).

(iv) Coordination with foreign tax credit limitation Rules similar to the rules of section 904 (b)(2)(B) shall apply with respect to the dividend rate differential under this paragraph.

(D) Special rules

(i) Amounts taken into account as investment income Qualified dividend income shall not include any amount which the taxpayer takes into account as investment income under section 163 (d)(4)(B).

(ii) Extraordinary dividends If a taxpayer to whom this section applies receives, with respect to any share of stock, qualified dividend income from 1 or more dividends which are extraordinary dividends (within the meaning of section 1059 (c)), any loss on the sale or exchange of such share shall, to the extent of such dividends, be treated as long-term capital loss.

(iii) Treatment of dividends from regulated investment companies and real estate investment trusts A dividend received from a regulated investment company or a real estate investment trust shall be subject to the limitations prescribed in sections 854 and 857.

(i) Rate reductions after 2000

(1) 10-percent rate bracket

(A) In general

In the case of taxable years beginning after December 31, 2000—

(i) the rate of tax under subsections (a), (b), (c), and (d) on taxable income not over the initial bracket amount shall be 10 percent, and

(ii) the 15 percent rate of tax shall apply only to taxable income over the initial bracket amount but not over the maximum dollar amount for the 15-percent rate bracket.

(B) Initial bracket amount

For purposes of this paragraph, the initial bracket amount is—

(i) $14,000 in the case of subsection (a),

(ii) $10,000 in the case of subsection (b), and

(iii) 1/2 the amount applicable under clause (i) (after adjustment, if any, under subparagraph (C)) in the case of subsections (c) and (d).

(C) Inflation adjustment

In prescribing the tables under subsection (f) which apply with respect to taxable years beginning in calendar years after 2003—

(i) the cost-of-living adjustment shall be determined under subsection (f)(3) by substituting "2002" for "1992" in subparagraph (B) thereof, and

(ii) the adjustments under clause (i) shall not apply to the amount referred to in subparagraph (B)(iii).

If any amount after adjustment under the preceding sentence is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

(D) Coordination with acceleration of 10 percent rate bracket benefit for 2001

This paragraph shall not apply to any taxable year to which section 6428 applies.

(2) Reductions in rates after June 30, 2001

In the case of taxable years beginning in a calendar year after 2000, the corresponding percentage specified for such calendar year in the following table shall be substituted for the otherwise applicable tax rate in the tables under subsections (a), (b), (c), (d), and (e).

In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%	
2002	27.0%	30.0%	35.0%	38.6%	
2003 and thereafter	25.0%	28.0%	33.0%	35.0%	

(3) Adjustment of tables

The Secretary shall adjust the tables prescribed under subsection (f) to carry out this subsection.

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Sec. 1. - Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of -

(1)

every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2)

every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $36,900	15% of taxable income.
Over $36,900 but not over $89,150	$5,535, plus 28% of the excess over $36,900.
Over $89,150 but not over $140,000	$20,165, plus 31% of the excess over $89,150.
Over $140,000 but not over $250,000	$35,928.50, plus 36% of the excess over $140,000.
Over $250,000	$75,528.50, plus 39.6% of the excess over $250,000.

(b) Heads of households

There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:

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Not over $29,600	15% of taxable income.
Over $29,600 but not over $76,400	$4,440, plus 28% of the excess over $29,600.
Over $76,400 but not over $127,500	$17,544, plus 31% of the excess over $76,400.
Over $127,500 but not over $250,000	$33,385, plus 36% of the excess over $127,500.
Over $250,000	$77,485, plus 39.6% of the excess over $250,000.

(c) Unmarried individuals (other than surviving spouses and heads of households)

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $22,100	15% of taxable income.
Over $22,100 but not over $53,500	$3,315, plus 28% of the excess over $22,100.
Over $53,500 but not over $115,000	$12,107, plus 31% of the excess over $53,500.
Over $115,000 but not over $250,000	$31,172, plus 36% of the excess over $115,000.
Over $250,000	$79,772, plus 39.6% of the excess over $250,000.

(d) Married individuals filing separate returns

There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $18,450	15% of taxable income.
Over $18,450 but not over $44,575	$2,767.50, plus 28% of the excess over $18,450.
Over $44,575 but not over $70,000	$10,082.50, plus 31% of the excess over $44,575.

Over $70,000 but not over $125,000	$17,964.25, plus 36% of the excess over $70,000.
Over $125,000	$37,764.25, plus 39.6% of the excess over $125,000.

(e) Estates and trusts

There is hereby imposed on the taxable income of -

(1)

every estate, and

(2)

every trust,

taxable under this subsection a tax determined in accordance with the following table

If taxable income is:	**The tax is:**
Not over $1,500	15% of taxable income.
Over $1,500 but not over $3,500	$225, plus 28% of the excess over $1,500.
Over $3,500 but not over $5,500	$785, plus 31% of the excess over $3,500.
Over $5,500 but not over $7,500	$1,405, plus 36% of the excess over $5,500.
Over $7,500	$2,125, plus 39.6% of the excess over $7,500.

(f) Adjustments in tax tables so that inflation will not result in tax increases

(1) In general

Not later than December 15 of 1993, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) Method of prescribing tables

The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed -

(A)

by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

(B)

by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C)

by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) Cost-of-living adjustment

For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which -

(A)

the CPI for the preceding calendar year, exceeds

(B)

the CPI for the calendar year 1992.

(4) CPI for any calendar year

For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(5) Consumer Price Index

For purposes of paragraph (4), the term ''Consumer Price Index'' means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

(6) Rounding

(A) In general

If any increase determined under paragraph (2)(A), section 63(c)(4), section 68(b)(2) or section 151(d)(4) is not a multiple of $50, such increase shall be

rounded to the next lowest multiple of $50.

(B) Table for married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(4)(A)) shall be applied by substituting ''$25'' for ''$50'' each place it appears.

(7) Special rule for certain brackets

(A) Calendar year 1994

In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

(B) Later calendar years

In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost -of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting ''1993'' for ''1992''.

(g) Certain unearned income of minor children taxed as if parent's income

(1) In general

In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of -

(A)

the tax imposed by this section without regard to this subsection, or

(B)

the sum of -

(i)

the tax which would be imposed by this section if

the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(ii)

such child's share of the allocable parental tax.

(2) Child to whom subsection applies

This subsection shall apply to any child for any taxable year if -

(A)

such child has not attained age 14 before the close of the taxable year, and

(B)

either parent of such child is alive at the close of the taxable year.

(3) Allocable parental tax

For purposes of this subsection -

(A) In general

The term ''allocable parental tax'' means the excess of -

(i)

the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

(ii)

the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(B) Child's share

A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the

child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

(C) Special rule where parent has different taxable year

Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(4) Net unearned income

For purposes of this subsection -

(A) In general

The term ''net unearned income'' means the excess of -

(i)

the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section 911(d)(2)), over

(ii)

the sum of -

(I)

the amount in effect for the taxable year under section 63(c)(5)(A) (relating to limitation on standard deduction in the case of certain dependents), plus

(II)

the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i).

(B) Limitation based on taxable income

The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(5) Special rules for determining parent to whom subsection applies

For purposes of this subsection, the parent whose taxable income shall be taken into account shall be -

(A)

in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152(e)) of the child, and

(B)

in the case of married individuals filing separately, the individual with the greater taxable income.

(6) Providing of parent's TIN

The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

(7) Election to claim certain unearned income of child on parent's return

(A) In general

If -

(i)

any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

(ii)

such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described,

(iii)

no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv)

the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

(B) Income included on parent's return

In the case of a parent making the election under this paragraph -

(i)

the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds twice the amount described in paragraph (4)(A)(ii)(I)) shall be included in such parent's gross income for the taxable year,

(ii)

the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of -

(I)

the amount determined under this section after the application of clause (i), plus

(II)

for each such child, 15 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and

(iii)

any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

(C) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.

(h) Maximum capital gains rate

(1) In general

If a taxpayer has a net capital gain for any taxable year, the tax imposed by this section for such taxable year shall not exceed the sum of -

(A)

a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of -

(i)

taxable income reduced by the net capital gain; or

(ii)

the lesser of -

(I)

the amount of taxable income taxed at a rate below 28 percent; or

(II)

taxable income reduced by the adjusted net capital gain;

(B)

10 percent of so much of the adjusted net capital gain (or, if less, taxable income) as does not exceed the excess (if any) of -

(i)

the amount of taxable income which would (without regard to this paragraph) be taxed at a rate below 28 percent, over

(ii)

the taxable income reduced by the adjusted net capital gain;

(C)

20 percent of the adjusted net capital gain (or, if less, taxable income) in excess of the amount on which a tax is determined under subparagraph (B);

(D)

25 percent of the excess (if any) of -

(i)

the unrecaptured section 1250 gain (or, if less, the net capital gain), over

(ii)

the excess (if any) of -

(I)

the sum of the amount on which tax is determined under subparagraph (A) plus the net capital gain, over

(II)

taxable income; and

(E)

28 percent of the amount of taxable income in excess of the sum of the amounts on which tax is determined under the preceding subparagraphs of this paragraph.

(2) Reduced capital gain rates for qualified 5-year gain

(A) Reduction in 10-percent rate

In the case of any taxable year beginning after December 31, 2000, the rate under paragraph (1)(B) shall be 8 percent with respect to so much of the amount to which the 10-percent rate would otherwise apply as does not exceed qualified 5-year gain, and 10 percent with respect to the remainder of such amount.

(B) Reduction in 20-percent rate

The rate under paragraph (1)(C) shall be 18 percent with respect to so much of the amount to which the 20-percent rate would otherwise apply as does not exceed the lesser of -

(i)

the excess of qualified 5-year gain over the amount of such gain taken into account under subparagraph (A) of this paragraph; or

(ii)

the amount of qualified 5-year gain (determined by taking into account only property the holding period for which begins after December 31, 2000),

and 20 percent with respect to the remainder of such amount. For purposes of determining under the preceding sentence whether the holding period of property begins after December 31, 2000, the holding period of property acquired pursuant to the exercise of an option (or other right or obligation to acquire property) shall include the period such option (or other right or obligation) was held.

(3) Net capital gain taken into account as investment income

For purposes of this subsection, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

(4) Adjusted net capital gain

For purposes of this subsection, the term ''adjusted net capital gain'' means net capital gain reduced (but not below zero) by the sum of -

(A)

unrecaptured section 1250 gain; and

(B)

28-percent rate gain.

(5) 28-percent rate gain

For purposes of this subsection, the term ''28-percent rate gain'' means the excess (if any) of -

(A)

the sum of -

(i)

collectibles gain; and

(ii)

section 1202 gain, over

(B)

the sum of -

(i)

collectibles loss;

(ii)

the net short-term capital loss; and

(iii)

the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

(6) Collectibles gain and loss

For purposes of this subsection -

(A) In general

The terms ''collectibles gain'' and ''collectibles loss'' mean gain or loss (respectively) from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income and such loss is taken into account in computing taxable income.

(B) Partnerships, etc.

For purposes of subparagraph (A), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

(7) Unrecaptured section 1250 gain

For purposes of this subsection -

(A) In general

The term ''unrecaptured section 1250 gain'' means the excess (if any) of -

(i)

the amount of long-term capital gain (not otherwise treated as ordinary income) which would

be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, over

(ii)

the excess (if any) of -

(I)

the amount described in paragraph (5)(B); over

(II)

the amount described in paragraph (5)(A).

(B) Limitation with respect to section 1231 property

The amount described in subparagraph (A)(i) from sales, exchanges, and conversions described in section 1231(a)(3)(A) for any taxable year shall not exceed the net section 1231 gain (as defined in section 1231 (c)(3)) for such year.

(8) Section 1202 gain

For purposes of this subsection, the term ''section 1202 gain'' means the excess of -

(A)

the gain which would be excluded from gross income under section 1202 but for the percentage limitation in section 1202(a), over

(B)

the gain excluded from gross income under section 1202.

(9) Qualified 5-year gain

For purposes of this subsection, the term ''qualified 5-year gain'' means the aggregate long-term capital gain from property held for more than 5 years. The determination under the preceding sentence shall be made without regard to collectibles gain, gain described in paragraph (7)(A)(i), and section 1202 gain.

(10) Coordination with recapture of net ordinary losses under section 1231

If any amount is treated as ordinary income under section 1231(c), such amount shall be allocated among

the separate categories of net section 1231 gain (as defined in section 1231(c)(3)) in such manner as the Secretary may by forms or regulations prescribe.

(11) Regulations

The Secretary may prescribe such regulations as are appropriate (including regulations requiring reporting) to apply this subsection in the case of sales and exchanges by pass-thru entities and of interests in such entities.

(12) Pass-thru entity defined

For purposes of this subsection, the term ''pass-thru entity'' means -

(A)

a regulated investment company;

(B)

a real estate investment trust;

(C)

an S corporation;

(D)

a partnership;

(E)

an estate or trust;

(F)

a common trust fund;

(G)

a foreign investment company which is described in section 1246(b)(1) and for which an election is in effect under section 1247; and

(H)

a qualified electing fund (as defined in section 1295).

(13) Special rules

(A) Determination of 28-percent rate gain

In applying paragraph (5) -

(i)

the amount determined under subparagraph (A) of paragraph (5) shall include long-term capital gain (not otherwise described in such subparagraph) -

(I)

which is properly taken into account for the portion of the taxable year before May 7, 1997; or

(II)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998;

(ii)

the amount determined under subparagraph (B) of paragraph (5) shall include long-term capital loss (not otherwise described in such subparagraph) -

(I)

which is properly taken into account for the portion of the taxable year before May 7, 1997; or

(II)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998; and

(iii)

subparagraph (B) of paragraph (5) (as in effect immediately before the enactment of this clause) shall apply to amounts properly taken into account before January 1, 1998.

(B) Determination of unrecaptured section 1250 gain

The amount determined under paragraph (7)(A)(i) shall not include gain -

(i)

which is properly taken into account for the portion

of the taxable year before May 7, 1997; or

(ii)

from property held not more than 18 months which is properly taken into account for the portion of the taxable year after July 28, 1997, and before January 1, 1998.

(C) Special rules for pass-thru entities

In applying this paragraph with respect to any pass-thru entity, the determination of when gains and loss are properly taken into account shall be made at the entity level.

(D) Charitable remainder trusts

Subparagraphs (A) and (B)(ii) shall not apply to any capital gain distribution made by a trust described in section 664.'

Next

Code **Sec. 1.1-1 Income tax on individuals.**

(a) General rule.

(1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual. For optional tax in the case of taxpayers with adjusted gross income of less than $10,000 (less than $5,000 for taxable years beginning before January 1, 1970) see section 3. The tax imposed is upon taxable income (determined by subtracting the allowable deductions from gross income). The tax is determined in accordance with the table contained in section 1. See subparagraph (2) of this paragraph for reference guides to the appropriate table for taxable years beginning on or after January 1, 1964, and before January 1, 1965, taxable years beginning after December 31, 1964, and before January 1, 1971, and taxable years beginning after December 31, 1970. In certain cases credits are allowed against the amount of the tax. See Part IV (section 31 and following), Subchapter A, Chapter 1 of the Code. In general, the tax is payable upon the basis of returns rendered by persons liable therefor (Subchapter A (sections 6001 and following), Chapter 61 of the Code) or at the source of the income by withholding. For the computation of tax in the case of a joint return of a husband and wife, or a return of a surviving spouse, for taxable years beginning before January 1, 1971, see section 2. The computation of tax in such a case for taxable years beginning after December 31, 1970, is determined in accordance with the table contained in section 1(a) as amended by the Tax Reform Act of 1969. For other rates of tax on individuals, see section 5(a). For the imposition of an additional tax for the calendar years 1968, 1969, and 1970, see section 51(a).

(2)

(i) For taxable years beginning on or after January 1, 1964, the tax imposed upon a single individual, a head of a household, a married individual filing a separate return, and estates and trusts is the tax imposed by section 1 determined in accordance with the appropriate table contained in the following subsection of section 1:

Taxable years beginning in 1964	Taxable years beginning after 1964 but before 1971	Taxable years beginning after Dec. 31, 1970 (references in this column are to the Code as amended by the Tax Reform Act of 1969)

Single individual	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(c).
Head of a household	Sec. 1(b)(1)	Sec. 1(b)(2)	Sec. 1(b).
Married individual filing a separate return	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(d).
Estates and trusts	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(d).

(ii) For taxable years beginning after December 31, 1970, the tax imposed by section 1(d), as amended by the Tax Reform Act of 1969, shall apply to the income effectively connected with the conduct of a trade or business in the United States by a married alien individual who is a nonresident of the United States for all or part of the taxable year or by a foreign estate or trust. For such years the tax imposed by section 1(c), as amended by such Act, shall apply to the income effectively connected with the conduct of a trade or business in the United States by an unmarried alien individual (other than a surviving spouse) who is a nonresident of the United States for all or part of the taxable year. See paragraph (b)(2) of section 1.871-8.

(3) The income tax imposed by section 1 upon any amount of taxable income is computed by adding to the income tax for the bracket in which that amount falls in the appropriate table in section 1 the income tax upon the excess of that amount over the bottom of the bracket at the rate indicated in such table.

(4) The provisions of section 1 of the Code, as amended by the Tax Reform Act of 1969, and of this paragraph may be illustrated by the following examples:

Example 1.

A, an unmarried individual, had taxable income for the calendar year 1964 of $15,750. Accordingly, the tax upon such taxable income would be $4,507.50, computed as follows from the table in section 1(a)(1):

Tax on $14,000 (from table)	$3,790.00

Tax on $1,750 (at 41 percent as determined from the table)	717.50
Total tax on $15,750	4,507.50

Example 2.

Assume the same facts as in example (1), except the figures are for the calendar year 1965. The tax upon such taxable income would be $4,232.50, computed as follows from the table in section 1(a)(2):

Tax on $14,000 (from table)	$3,550.00
Tax on $1,750 (at 39 percent as determined from the table)	682.50
Total tax on $15,750	4,232.50

Example 3.

Assume the same facts as in example (1), except the figures are for the calendar year 1971. The tax upon such taxable income would be $3,752.50, computed as follows from the table in section 1(c), as amended:

Tax on $14,000 (from table)	$3,210.00
Tax on $1,750 (at 31 percent as determined from the table)	542.50
Total tax on $15,750	3,752.50

(b) Citizens or residents of the United States liable to tax.

In general, all citizens of the United States, wherever resident, and all resident alien individuals are

liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. Pursuant to section 876, a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, except as provided in section 933 with respect to Puerto Rican source income, subject to taxation in the same manner as a resident alien individual. As to tax on nonresident alien individuals, see sections 871 and 877.

(c) Who is a citizen.

Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship, see Chapters 1 and 2 of Title III of the Immigration and Nationality Act (8 U.S.C. 1401-1459). For rules governing loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481-1489), Schneider v. Rusk, (1964) 377 U.S. 163, and Rev. Rul. 70-506, C.B. 1970-2, 1. For rules pertaining to persons who are nationals but not citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. 1408). For special rules applicable to certain expatriates who have lost citizenship with a principal purpose of avoiding certain taxes, see section 877. A foreigner who has filed his declaration of intention of becoming a citizen but who has not yet been admitted to citizenship by a final order of a naturalization court is an alien.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7332, 39 FR 44216, Dec. 23, 1974]

Code **Sec. 31.3401(c)-1 Employee.**

(a) The term EMPLOYEE includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily

present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(f) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(g) The term EMPLOYEE includes every individual who receives a supplemental unemployment compensation benefit which is treated under paragraph (b)(14) of Section 31.3401(a)-1 as if it were wages.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).

[T.D. 6516, 25 FR 13096, Dec. 20, 1960, as amended by T.D. 7068, 35 FR 17329, Nov. 11, 1970]

Sec. 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(a) Processing of returns.

When the returns are filed in the office of the district director of internal revenue or the office of the director of a regional service center, they are checked first for form, execution, and mathematical accuracy. Mathematical errors are corrected and a correction notice of any such error is sent to the taxpayer. Notice and demand is made for the payment of any additional tax so resulting, or refund is made of any overpayment. Returns are classified for examination at regional service centers. Certain individual income tax returns with potential unallowable items are delivered to Examination Divisions at regional service centers for correction by correspondence. Otherwise, returns with the highest examination potential are delivered to district Examinations Divisions based on workload capacities. Those most in need of examination are selected for office or field examination.

(b) Examination of returns - (1) General. The original examination of income (including partnership and fiduciary), estate, gift, excise, employment, exempt organization, and information returns is a primary function of examiners in the Examination Division of the office of each district director of internal revenue. Such examiners are organized in groups, each of which is under the immediate supervision of a group supervisor designated by the district director. Revenue agents (and such other officers or employees of the Internal Revenue Service as may be designated for this purpose by the Commissioner) are authorized to examine any books, papers, records, or memoranda bearing upon matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths. See section 7602 of the Code and the regulations thereunder. There are two general types of examination. These are commonly called 'office examination' and 'field examination'. During the examination of a return a taxpayer may be represented before the examiner by an attorney, certified public accountant, or other representative. See Subpart E of this part for conference and practice requirements.

(2) Office examination - (i) Adjustments by Examination Division at service center. Certain individual income tax returns identified as containing potential unallowable items are examined by Examination Divisions at regional service centers. Correspondence examination techniques are used. If the taxpayer requests an interview to discuss the proposed adjustments, the case is transferred to the taxpayer's district office. If the taxpayer does not agree to proposed adjustments, regular appellate procedures apply.

(ii) Examinations at district office. Certain returns are examined at district offices by office examination techniques. These returns include some business returns, besides the full range of nonbusiness individual income tax returns. Office examinations are conducted primarily by the interview method. Examinations are conducted by correspondence only when warranted by the nature of the questionable items and by the

convenience and characteristics of the taxpayer. In a correspondence examination, the taxpayer is asked to explain or send supporting evidence by mail. In an office interview examination, the taxpayer is asked to come to the district director's office for an interview and to bring certain records in support of the return. During the interview examination, the taxpayer has the right to point out to the examiner any amounts included in the return which are not taxable, or any deductions which the taxpayer failed to claim on the return. If it develops that a field examination is necessary, the examiner may conduct such examination.

(3) Field examination. Certain returns are examined by field examination which involves an examination of the taxpayer's books and records on the taxpayer's premises. An examiner will check the entire return filed by the taxpayer and will examine all books, papers, records, and memoranda dealing with matters required to be included in the return. If the return presents an engineering or appraisal problem (e.g., depreciation or depletion deductions, gains or losses upon the sale or exchange of property, or losses on account of abandonment, exhaustion, or obsolescence), it may be investigated by an engineer agent who makes a separate report.

(4) Conclusion of examination. At the conclusion of an office or field examination, the taxpayer is given an opportunity to agree with the findings of the examiner. If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights. If the taxpayer does agree with the proposed changes, the examiner will invite the taxpayer to execute either Form 870 or another appropriate agreement form. When the taxpayer agrees with the proposed changes but does not offer to pay any deficiency or additional tax which may be due, the examiner will also invite payment (by check or money order), together with any applicable interest or penalty. If the agreed case involves income, profits, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes, the agreement is evidenced by a waiver by the taxpayer of restrictions on assessment and collection of the deficiency, or an acceptance of a proposed overassessment. If the case involves excise or employment taxes or 100 percent penalty, the agreement is evidenced in the form of a consent to assessment and collection of additional tax or penalty and waiver of right to file claim for abatement, or the acceptance of the proposed overassessment. Even though the taxpayer signs an acceptance of a proposed overassessment the district director or the director of the regional service center remains free to assess a deficiency. On the other hand, the taxpayer who has given a waiver may still claim a refund of any part of the deficiency assessed against, and paid by, the taxpayer, or any part of the tax originally assessed and paid by the taxpayer. The taxpayer's acceptance of an agreed overassessment does not prevent the taxpayer from filing a claim and bringing a suit for an additional sum, nor does it preclude the Government from maintaining suit to recover an

erroneous refund. As a matter of practice, however, waivers or acceptances ordinarily result in the closing of a case insofar as the Government is concerned.

(5) Technical advice from the National Office - (i) Definition and nature of technical advice. (a) As used in this subparagraph, 'technical advice' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of a district office in connection with the examination of a taxpayer's return or consideration of a taxpayer's return claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

(b) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may, in his discretion, request technical advice with respect to the consideration of a request for a determination letter.

(c) If a district director is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked, and requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice and the procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the district director's recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the district director should inform the taxpayer of his opinion that the ruling letter should be revoked. The district director, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(d) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws other than those which are under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. This authority has been largely redelegated to subordinate officials.

(e) The provisions of this subparagraph apply only to a case under the jurisdiction of a district director but do not apply to an Employee Plans case under the jurisdiction of a key district director as provided in Sec. 601.201(o) or to an Exempt Organization case under the jurisdiction of a key

district director as provided in Sec. 601.201(n). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). The provisions of this subparagraph do not apply to a case under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. They also do not apply to a case under the jurisdiction of an Appeals office, including a case previously considered by Appeals. The technical advice provisions applicable to a case under the jurisdiction of an Appeals office, other than Employee Plans and Exempt Organizations cases, are set forth in Sec. 601.106(f)(10). A case remains under the jurisdiction of the district director even though an Appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of section 267 of the Code) in an entirely different transaction. Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a Form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(ii) Areas in which technical advice may be requested. (a) District directors may request technical advice on any technical or procedural question that develops during the audit or examination of a return, or claim for refund or credit, of a taxpayer. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) District directors are encouraged to request technical advice on any technical or procedural question arising in connection with any case of the type described in subdivision (i) of this subparagraph, which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office. This request should be made at the earliest possible stage of the examination process.

(iii) Requesting technical advice. (a) It is the responsibility of the district office to determine whether technical advice is to be requested on any issue before that office. However, while the case is under the jurisdiction of the district director, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. This request should be made at the earliest possible stage of the examination process. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the

taxpayer's request, the examiner is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advise the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the examiner declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (g) of this subdivision. If the examiner initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice submitted by the district director should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions from the district office, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. Every effort should be made to reach agreement as to the facts and specific point at issue. If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the district office, a statement of his understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(d) If the taxpayer initiates the action to request advice, and his statement of the facts and point or points at issue are not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to the district official's letter. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

(e)(1) In the case of requests for technical advice the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever applicable (relating to agreement by the taxpayer with the statement of facts submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be informed by the district director that such a statement is required. If the district director does not receive the statement within 10 days after the taxpayer has been informed of the need for such statement, the district director may decline to submit the request for technical advice. If the district director decides to

request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(2) The requirements included in Sec. 601.105(b)(5) with respect to submissions of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests made by the district director before November 1, 1976, or requests for any document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions, required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis, under section 6110(c) of the Code, for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, the taxpayer may submit a statement explaining the taxpayer's position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, the taxpayer will also be informed of the taxpayer's right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether such a conference is desired.

(i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the

technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 611(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice. (a) If the taxpayer has requested referral of an issue before a district office to the National Office for technical advice, and after consideration of the request the examiner is of the opinion that the circumstances do not warrant such referral, he will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the examining officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why he believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(c) The examining officer will submit the statement of the taxpayer through channels to the Chief, Examination Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Examination Division, will determine, on the basis of the

statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Examination Division, will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief, Examination Division, whether he agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Examination Division, not to request technical advice from the National Office. However, if he does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Examination Division, for review. After review in the National Office, the district office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the district office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

> (v) Conference in the National Office. (a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the examining officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no 'right' of

appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate district director. The district director will be requested to give the matter his prompt attention. He may verify the additional facts and data and comment upon it to the extent he deems it appropriate.

(e) A taxpayer or a taxpayer's representative desiring to obtain information as to the status of the case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official Telephone numbers, (Area Code 202)

Director Corporation Tax 566-4504 or 566-4505.

Division,

Director, Individual Tax Division 566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office. (a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivisions (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the district director and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the 'Technical Advice Memorandum') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the district office. The discussion of the issues will be in such detail that the district officials are apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110 (d) of the Code) which the district director shall forward to the taxpayer at such time that the district director furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subsection.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the district office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the district director. However, in the case of technical advice memoranda described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical

advice memorandum shall not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum, if the taxpayer desires to protest the disclosure of certain information in the technical advice memorandum, the taxpayer must within 20 days after the notice is mailed submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally the Internal Revenue Service will not consider the deletion under this subparagraph of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the district director, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion with respect to the deletions to be made.

(vii) Action on technical advice in district offices. (a) Unless the district director feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, his office will proceed to process the taxpayer's case on the basis of the conclusions expressed in the technical advice memorandum.

(b) The district director will furnish to the taxpayer a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memoranda involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the district director that he should not furnish a copy of the technical memorandum to the taxpayer, the district director will so inform the taxpayer if he requests a copy.

(viii) Effect of technical advice. (a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and

precedents to the facts of a specific case, and is issued primarily as a means of assisting district officials in the examination and closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 01.201(1) (7) and 601.201(1) (8).

(c) Technical advice memoranda often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Sec. 01.601(d)(2)(i)(a) and 601.601(d) (2) (v).

(d) A district director may raise an issue in any taxable period, even though he or she may have asked for and been furnished technical advice with regard to the same or a similar issue in any other taxable period.

(c) District procedure-(1) Office examination. (i) In a correspondence examination the taxpayer is furnished with a report of the examiner's findings by a form letter. The taxpayer is asked to sign and return an agreement if the taxpayer accepts the findings. The letter also provides a detailed explanation of the alternatives available if the taxpayer does not accept the findings, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An Appeals office conference will be granted to the taxpayer upon request without submission of a written protest.

(ii) If, at the conclusion of an office interview examination, the taxpayer does not agree with the adjustments proposed, the examiner will fully explain the alternatives available which include, if practicable, an immediate interview with a supervisor or an immediate conference with an Appeals Officer. If an immediate interview or Appeals office conference is not practicable, or is not requested by the taxpayer, the examination report will be mailed to the taxpayer under cover of an appropriate transmittal letter. This letter provides a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An appeals office

conference will be granted to the taxpayer upon request without submission of a written protest.

(2) Field examination. (i) If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed, the examiner will prepare a complete examination report fully explaining all proposed adjustments. Before the report is sent to the taxpayer, the case file will be submitted to the district Centralized Services and, in some cases, Quality Review function for appropriate review. Following such review, the taxpayer will be sent a copy of the examination report under cover of a transmittal (30-day) letter, providing a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requesting the taxpayer to inform the district director, within the specified period, of the choice of action.

(ii) If the total amount of proposed additional tax, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) does not exceed $2,500 for any taxable period, the taxpayer will be granted an Appeals office conference on request. A written protest is not required.

(iii) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a brief written statement of disputed issues is submitted.

(iv) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a written protest is filed.

(d) Thirty-day letters and protests - (1) General. The report of the examiner, as approved after review, recommends one of four determinations:

(i) Acceptance of the return as filed and closing of the case;

(ii) Assertion of a given deficiency or additional tax;

(iii) Allowance of a given overassessment, with or without a claim for refund, credit, or

abatement;

(iv) Denial of a claim for refund, credit, or abatement which has been filed and is found wholly lacking in merit. When a return is accepted as filed (as in subdivision (i) of this subparagraph), the taxpayer is notified by appropriate 'no change' letter. In an unagreed case, the district director sends to the taxpayer a preliminary or '30-day letter' if any one of the last three determinations is made (except a full allowance of a claim in respect of any tax). The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examiner's report explaining the basis of the proposed determination. It suggests to the taxpayer that if the taxpayer concurs in the recommendation, he or she indicate agreement by executing and returning a waiver or acceptance. The preliminary letter also informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination. If the taxpayer does not respond to the letter within 30 days, a statutory notice of deficiency will be issued or other appropriate action taken, such as the issuance of a notice of adjustment, the denial of a claim in income, profits, estate, and gift tax cases, or an appropriate adjustment of the tax liability or denial of a claim in excise and employment tax cases.

(2) Protests. (i) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in office interview and correspondence examination cases.

(ii) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period.

(iii) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(iv) A written protest is optional (although a brief written statement of disputed issues is required) to obtain Appeals consideration in a field examination case if for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but

does not exceed $10,000.

(v) Instructions for preparation of written protests are sent to the taxpayer with the transmittal (30-day) letter.

(e) Claims for refund or credit. (1) After payment of the tax a taxpayer may (unless he has executed an agreement to the contrary) contest the assessment by filing a claim for refund or credit for all or any part of the amount paid, except as provided in section 6512 of the Code with respect to certain taxes determined by the Tax Court, the decision of which has become final. A claim for refund or credit of income taxes shall be made on Form 1040X, 1120X, or an amended income tax return, in accordance with Sec. 301.6402-3. In the case of taxes other than income taxes, a claim for refund or credit shall be made on Form 843. The appropriate forms are obtainable from district directors or directors of service centers. Generally, the claim, together with appropriate supporting evidence, must be filed at the location prescribed in Sec. 301.6402-2(a) (2). A claim for refund or credit must be filed within the applicable statutory period of limitation. In certain cases, a properly executed income tax return may operate as a claim for refund or credit of the amount of the overpayment disclosed by such return. (See Sec. 301.6402-3).

(2) When claims for refund or credit are examined by the Examination Division, substantially the same procedure is followed (including appeal rights afforded to taxpayers) as when taxpayers' returns are originally examined. But see Sec. 601.108 for procedure for reviewing proposed overpayment exceeding $200,000 of income, estate, and gift taxes.

(3) As to suits for refund, see Sec. 601.103 (c).

(4) (Reserved)

(5) There is also a special procedure applicable to applications for tentative carryback adjustments under section 6411 of the Code (consult Forms 1045 and 1139).

(6) For special procedure applicable to claims for payment or credit in respect of gasoline used on a farm for farming purposes, for certain nonhighway purposes, for use in commercial aircraft, or used by local transit systems, see sections 39, 6420, and 6421 of the Code and Sec. 601.402(c)(3). For special procedure applicable to claims for payment or credit in respect of lubricating oil used otherwise than in a highway motor vehicle, see sections 39 and 6424 of the Code and Sec. 601.402(c)(3). For special procedure applicable for credit or refund of aircraft use tax, see section 6426 of the Code and Sec. 601.402(c)(4). For special procedure applicable for payment or credit in respect of special fuels not used for taxable purposes, see sections 39 and 6427 of the Code and Sec. 601.402(c)(5).

(7) For special procedure applicable in certain cases to adjustment of overpayment of estimated tax by a corporation see section 6425 of the Code.

(f) Interruption of examination procedure. The process of field examination and the course of the administrative procedure described in this section and in the following section may be interrupted in some cases by the imminent expiration of the statutory period of limitations for assessment of the tax. To protect the Government's interests in such a case, the district director of internal revenue or other designated officer may be required to dispatch a statutory notice of deficiency (if the case is within jurisdiction of U.S. Tax Court), or take other appropriate action to assess the tax, even though the case may be in examination status. In order to avoid interruption of the established procedure (except in estate tax cases), it is suggested to the taxpayer that he execute an agreement on Form 872 (or such other form as may be prescribed for this purpose). To be effective this agreement must be entered into by the taxpayer and the district director or other appropriate officer concerned prior to the expiration of the time otherwise provided for assessment. Such a consent extends the period for assessment of any deficiency, or any additional or delinquent tax, and extends the period during which the taxpayer may claim a refund or credit to a date 6 months after the agreed time of extension of the assessment period. When appropriate, a consent may be entered into restricted to certain issues.

(g) Fraud. The procedure described in this section does not apply in any case in which criminal prosecution is under consideration. Such procedure does obtain, however, in cases involving the assertion of the civil fraud penalty after the criminal aspects of the case have been closed.

(h) Jeopardy assessments. If the district director believes that the assessment or collection of a tax will be jeorpardized by delay, he/she is authorized and required to assess the tax immediately, together with interest and other additional amounts provided by law, notwithstanding the restrictions on assessment or collection of income, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes contained in section 6213(a) of the Code. A jeopardy assessment does not deprive the taxpayer of the right to file a petition with the Tax Court. Collection of a tax in jeopardy may be immediately enforced by the district director upon notice and demand. To stay collection, the taxpayer may file with the district director a bond equal to the amount for which the stay is desired. The taxpayer may request a review in the Appeals office of whether the making of the assessment was reasonable under the circumstances and whether the amount assessed or demanded was appropriate under the circumstances. See section 7429. This request shall be made, in writing, within 30 days after the earlier of -

(1) The day on which the taxpayer is furnished the written statement described in section

7429(a)(1); or

(2) The last day of the period within which this statement is required to be furnished. An Appeals office conference will be granted as soon as possible and a decision rendered without delay.

(i) Regional post review of examined cases. Regional Commissioners review samples of examined cases closed in their district offices to insure uniformity throughout their districts in applying Code provisions, regulations, and rulings, as well as the general policies of the Service.

(j) Reopening of Cases Closed After Examination. (1) The Service does not reopen any case closed after examination by a district office or service center, to make an adjustment unfavorable to the taxpayer unless:

(i) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact; or

(ii) The prior closing involved a clearly defined substantial error based on an established Service position existing at the time of the previous examination; or

(iii) Other circumstances exist which indicate failure to reopen would be a serious administrative omission.

(2) All reopenings are approved by the Chief, Examination Division (District Director in streamlined districts), or by the Chief, Compliance Division, for cases under his/her jurisdiction. If an additional inspection of the taxpayer's books of account is necessary, the notice to the taxpayer required by Code section 7605(b) will be delivered to the taxpayer at the time the reexamination is begun.

(k) Transfer of returns between districts. When request is received to transfer returns to another district for examination or the closing of a cased, the district director having jurisdiction may transfer the case, together with pertinent records to the district director of such other district. The Service will determine the time and place of the examination. In determining whether a transfer should be made, circumstances such as the following will be considered:

(1) Change of the taxpayer's domicile, either before or during examination.

(2) Discovery that taxpayer's books and records are kept in another district.

(3) Change of domicile of an executor or administrator to another district before or during

examination.

(4) The effective administration of the tax laws.

(l) Special procedures for crude oil windfall profit tax cases. For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405. (5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

Sec. 601.106 Appeals functions.

(a) General.

(1)

(i) There are provided in each region Appeals offices with office facilities within the region.

Unless they otherwise specify, taxpayers living outside the United States use the facilities of the Washington, D.C., Appeals Office of the the Mid-Atlantic Region. Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, the Commissioner has delegated to certain officers of the Appeals offices authority to represent the regional commissioner in those matters set forth in subdivisions (ii) through (v) of this subparagraph. If a statutory notice of deficiency was issued by a district director or the Director, Foreign Operations District, the Appeals office may waive jurisdiction to the director who issued the statutory notice during the 90-day (or 150-day) period for filing a petition with the Tax Court, except where criminal prosecution has been recommended and not finally disposed of, or the statutory notice includes the ad valorem fraud penalty. After the filing of a petition in the Tax Court, the Appeals office will have exclusive settlement jurisdiction, subject to the provisions of subparagraph (2) of this paragraph, for a period of 4 months (but no later than the receipt of the trial calendar in regular cases and no later than 15 days before the calendar call in S cases), over cases docketed in the Tax Court. Subject to the exceptions and limitations set forth in subparagraph (2) of this paragraph, there is also vested in the Appeals offices authority to represent the regional commissioner in his/her exclusive authority to settle (a) all cases docketed in the Tax Court and designated for trial at any place within the territory comprising the region, and (b) all docketed cases originating in the office of any district director situated within the region, or in which jurisdiction has been transferred to

the region, which are designated for trial at Washington, D.C., unless the petitioner resides in, and his/her books and records are located or can be made available in, the region which includes Washington, D.C.

(ii) Certain officers of the Appeals offices may represent the regional commissioner in his/her exclusive and final authority for the determination of -

(a) Federal income, profits, estate (including extensions for payment under section 6161(a)(2)), gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability (whether before or after the issuance of a statutory notice of deficiency);

(b) Employment or certain Federal excise tax liability; and

(c) Liability for additions to the tax, additional amounts, and assessable penalties provided under Chapter 68 of the Code, in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred to the region.

(iii) The taxpayer must request Appeals consideration.

(a) An oral request is sufficient to obtain Appeals consideration in (1) all office interview or correspondence examination cases or (2) a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period. No written protest or brief statement of disputed issues is required.

(b) A brief written statement of disputed issues is required (a written protest is optional) to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000 for any taxable period.

(c) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be

compromised) exceeds $10,000 for any taxable period.

(d) A written protest is required to obtain Appeals consideration in all employee plan and exempt organization cases.

(e) A written protest is required to obtain Appeals consideration in all partnership and S corporation cases.

(iv) Sections 6659(a)(1) and 6671(a) provide that additions to the tax, additional amounts, penalties and liabilities (collectively referred to in this subdivision as 'penalties') provided by Chapter 68 of the Code shall be paid upon notice and demand and shall be assessed and collected in the same manner as taxes. Certain Chapter 68 penalties may be appealed after assessment to the Appeals office. This post-assessment appeal procedure applies to all but the following cCapter 68 penalties:

(a) Penalties that are not subject to a reasonable cause or reasonable basis determination (examples are additions to the tax for failure to pay estimated income tax under sections 6654 and 6655);

(b) Penalties that are subject to the deficiency procedures of subchapter B of Chapter 63 of the Code (because the taxpayer has the right to appeal such penalties, such as those provided under section 6653 (a) and (b), prior to assessment):

(c) Penalties that are subject to an administratively granted preassessment appeal procedure such as that provided in Sec. 1.6694-2(a)(1) because taxpayers are able to protest such penalties prior to assessment;

(d) The penalty provided in section 6700 for promoting abusive tax shelters (because the penalty is subject to the procedural rules of section 6703 which provides for an extension of the period of collection of the penalty when a person pays not less than 15 percent of the amount of such penalty); and

(e) The 100 percent penalty provided under section 6672 (because the taxpayer has the opportunity to appeal this penalty prior to assessment). The appeal may be made before or after payment, but shall be made before the filing of a claim for refund. Technical advice procedures are not applicable to an appeal made under this subdivision.

(v) The Appeals office considers cases involving the initial or continuing recognition of

tax exemption and foundation classification. See Sec. 601.201(n)(5) and (n)(6). The Appeals office also considers cases involving the initial or continuing determination of employee plan qualification under Subchapter D of Chapter 1 of the Code. See Sec. 601.201(o)(6). However, the jurisdiction of the Appeals office in these cases is limited as follows:

(a) In cases under the jurisdiction of a key district director (or the National Office) which involve an application for, or the revocation or modification of, the recognition of exemption or the determination of qualification, if the determination concerning exemption is made by a National Office ruling, or if National Office technical advice is furnished concerning exemption or qualification, the decision of the National Office is final. The organization/plan has no right of appeal to the Appeals office or any other avenue of administrative appeal. See Sec. 601.201(n)(i), (n)(6)(ii)(b), (n)(9)(viii)(a), (o)(2)(iii), and (o)(6)(i).

(b) In cases already under the jurisdiction of an Appeals office, if the proposed disposition by that office is contrary to a National Office ruling concerning exemption, or to a National Office technical advice concerning exemption or qualification, issued prior to the case, the proposed disposition will be submitted, through the Office of the Regional Director of Appeals, to the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in section 521 cases, to the Assistant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See Sec. 601.201(n)(5)(iii), (n)(6)(ii)(d), (n)(6)(iv), and (o)(6)(iii).

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

(i) Negotiate or make a settlement in any case docketed in the Tax Court if the notice of deficiency, liability or other determination was issued by Appeals officials;

(ii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or other determination was issued after appeals consideration of all petitioned issues by the Employee Plans/Exempt Organizations function;

(iii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or final adverse determination letter was issued by a District Director and is based upon a National Office ruling or National Office technical advice in that case

involving a qualification of an employee plan or tax exemption and/or foundation status of an organization (but only to the extent the case involves such issue);

(iv) Negotiate or make a settlement if the case was docketed under Code sections 6110, 7477, or 7478;

(v) Eliminate the ad valorem fraud penalty in any case in which the penalty was determined by the district office or service center office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of Counsel; or

(vi) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel.

(3) The authority vested in Appeals does not extend to the determination of liability for any excise tax imposed by Subtitle E or by Subchapter D of chapter 78, to the extent it relates to Subtitle E.

(4) In cases under Appeals jurisdiction, the Appeals official has the authority to make and subscribe to a return under the provisions of section 6020 of the Code where taxpayer fails to make a required return.

(b) Initiation of proceedings before Appeals.

In any case in which the district director has issued a preliminary or '30-day letter' and the taxpayer requests Appeals consideration and files a written protest when required (see paragraph (c)(1) of Sec. 01.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization. However, the appeal procedures do not extend to cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds. Organizations such as labor unions and trade associations which have been examined by the district director to determine the amounts expended by the organization for purposes of lobbying, promotion or defeat of legislation, political campaigns, or propaganda related to those purposes are treated as 'taxpayers' for the purpose of this right of administrative appeal. Thus, upon requesting appellate consideration and filing a written protest, when required, to

the district director's findings that a portion of member dues is to be disallowed as a deduction to each member because expended for such purposes, the organization will be afforded full rights of administrative appeal to the Appeals activity similar to those rights afforded to taxpayers generally. After review of any required written protest by the district director, the case and its administrative record are referred to Appeals. Appeals may refuse to accept a protested nondocketed case where preliminary review indicates it requires further consideration or development. No taxpayer is required to submit a case to Appeals for consideration. Appeal is at the option of the taxpayer. After the issuance by the district director of a statutory notice of deficiency, upon the taxpayer's request, Appeals may take up the case for settlement and may grant the taxpayer a conference thereon.

(c) Nature of proceedings before Appeals.

Proceedings before Appeals are informal. Testimony under oath is not taken, although matters alleged as facts may be required to be submitted in the form of affidavits, or declared to be true under the penalties of perjury. Taxpayers may represent themselves or designate a qualified representative to act for them. See Subpart E of this part for conference and practice requirements. At any conference granted by Appeals on a nondocketed case, the district director will be represented if the Appeals official having settlement authority and the district director deem it advisable. At any such conference on a case involving the ad valorem fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, the District Counsel will be represented if he or she so desires.

(d) Disposition and settlement of cases before Appeals.

(1) In general.

During consideration of a case, the Appeals office should neither reopen an issue as to which the taxpayer and the office of the district director are in agreement nor raise a new issue, unless the ground for such action is a substantial one and the potential effect upon the tax liability is material. If the Appeals raises a new issue, the taxpayer or the taxpayer's representative should be so advised and offered an opportunity for discussion prior to the taking of any formal action, such as the issuance of a statutory notice of deficiency.

(2) Cases not docketed in the Tax Court.

(i) If after consideration of the case by Appeals a satisfactory settlement of some or all the issues is reached with the taxpayer, the taxpayer will be requested to sign Form

870-AD or other appropriate agreement form waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement. In addition, in partially unagreed cases, a statutory notice of deficiency will be prepared and issued in accordance with subdivision (ii) of this subparagraph with respect to the unagreed issue or issues.

(ii) If after consideration of the case by Appeals it is determined that there is a deficiency in income, profits, estate, gift tax, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability to which the taxpayer does not agree, a statutory notice of deficiency will be prepared and issued by Appeals. Officers of the Appeals office having authority for the administrative determination of tax liabilities referred to in paragraph (a) of this section are also authorized to prepare, sign on behalf of the Commissioner, and send to the taxpayer by registered or certified mail any statutory notice of deficiency prescribed in sections 6212 and 6861 of the Code, and in corresponding provisions of the Internal Revenue Code of 1939. Within 90 days, or 150 days if the notice is addressed to a person outside of the States of the Union and the District of Columbia, after such a statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the U.S. Tax Court for a redetermination of the deficiency. In addition, if a claim for refund is disallowed in full or in part by the Appelate Division and the taxpayer does not sign Form 2297, Appeals will prepare the statutory notice of claim disallowance and send it to the taxpayer by certified mail (or registered mail if the taxpayer is outside the United States), with a carbon copy to the taxpayer's representative by regular mail, if appropriate. In any other unagreed case, the case and its administrative file will be forwarded to the appropriate function with directions to take action with respect to the tax liability determined in Appeals. Administrative appeal procedures will apply to 100-percent penalty cases, except where an assessment is made because of Chief Counsel's request to support a third-party action in a pending refund suit. See Rev. Proc. 69-26.

(iii) Taxpayers desiring to further contest unagreed excise (other than those under Chapters 41 through 44 of the Code) and employment tax cases and 100-percent penalty cases must pay the additional tax (or portion thereof of divisible taxes) when assessed, file claim for refund within the applicable statutory period of limitations (ordinarily 3 years from time return was required to be filed or 2 years from payment, whichever expires later), and upon disallowance of claim or after 6 months from date claim was filed, file suit in U.S. District Court or U.S. Claims Court. Suits for refund of

taxes paid are under the jurisdiction of the Department of Justice.

(3) Cases docketed in the Tax Court.

(i) If the case under consideration in Appeals is docketed in the Tax Court and agreement is reached with the taxpayer with respect to the issues involved, the disposition of the case is effected by a stipulation of agreed deficiency or overpayment to be filed with the Tax Court and in conformity with which the Court will enter its order.

(ii) If the case under consideration in Appeals is docketed in the Tax Court and the issues remain unsettled after consideration and conference in Appeals, the case will be referred to the appropriate district counsel for the region for defense of the tax liability determined.

(iii) If the deficiency notice in a case docketed in the Tax Court was not issued by the Appeals office and no recommendation for criminal prosecution is pending, the case will be referred by the district counsel to the Appeals office for settlement as soon as it is at issue in the Tax Court. The settlement procedure shall be governed by the following rules:

(a) The Appeals office will have exclusive settlement jurisdiction for a period of 4 months over certain cases docketed in the Tax Court. The 4-month period will commence at the time Appeals receives the case from Counsel, which will be after the case is at issue. Appeals will arrange settlement conferences in such cases within 45 days of receipt of the case. In the event of a settlement, Appeals will prepare and forward to Counsel the necessary computations and any stipulation decisions secured. Counsel will prepare any needed settlement documents for execution by the parties and filing with the Tax Court. Appeals will also have authority to settle less than all the issues in the case and to refer the unsettled issues to Counsel for disposition. In the event of a partial settlement, Appeals will inform Counsel of the agreement of the petitioner(s) and Appeals may secure and forward to Counsel a stipulation covering the agreed issues. Counsel will, if necessary, prepare documents reflecting settlement of the agreed issues for execution by the parties and filing with the Tax Court at the appropriate time.

(b) At the end of the 4-month period, or before that time if Appeals determines the case is not susceptible of settlement, the case will be returned to Counsel.

Thereafter, Counsel will have exclusive authority to dispose of the case. If, at the end of the 4-month period, there is substantial likelihood that a settlement of the entire case can be effected in a reasonable period of time, Counsel may extend Appeals settlement jurisdiction for a period not to exceed 60 days, but not beyond the date of the receipt of a trial calendar upon which the case appears. Extensions beyond the 50-day period or after the event indicated will be granted only with the personal approval of regional counsel and will be made only in those cases in which the probability of settlement of the case in its entirety by Appeals clearly outweighs the need to commence trial preparation.

(c) During the period of Appeals jurisdiction, Appeals will make available such files and information as may be necessary for Counsel to take any action required by the Court or which is in the best interests of the Government. When a case is referred by Counsel to Appeals, Counsel may indicate areas of needed factual development or areas of possible technical uncertainties. In referring a case to Counsel, Appeals will furnish its summary of the facts and the pertinent legal authorities.

(d) The Appeals office may specify that proposed Counsel settlements be referred back to Appeals for its views. Appeals may protest the proposed Counsel settlements. If Counsel disagrees with Appeals, the Regional Counsel will determine the disposition of the cases.

(e) If an offer is received at or about the time of trial in a case designated by the Appeals office for settlement consultation, Counsel will endeavor to have the case placed on a motions calendar to permit consultation with and review by Appeals in accordance with the foregoing procedures.

(f) For issues in docketed and nondocketed cases pending with Appeals which are related to issues in docketed cases over which Counsel has jurisdiction, no settlement offer will be accepted by either Appeals or Counsel unless both agree that the offer is acceptable. The protest procedure will be available to Appeals and regional counsel will have authority to resolve the issue with respect to both the Appeals and Counsel cases. If settlement of the docketed case requires approval by regional counsel or Chief Counsel, the final decision with respect to the issues under the jurisdiction of both Appeals and Counsel will be made by regional counsel or Chief Counsel. See Rev. Proc. 79-59.

(g) Cases classified as 'Small Tax' cases by the Tax Court are given expeditious consideration because such cases are not included on a Trial Status Request. These cases are considered by the Court as ready for placing on a trial calendar as soon as the answer has been filed and are given priority by the Court for trial over other docketed cases. These cases are designated by the Court as small tax cases upon request of petitioners and will include letter 'S' as part of the docket number.

(e) Transfer and centralization of cases.

(1) An Appeals office is authorized to transfer settlement jurisdiction in a non-docketed case or in an excise or employment tax case to another region, if the taxpayer resides in and the taxpayer's books and records are located (or can be made available) in such other region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division.

(2) An Appeals office is authorized to transfer settlement jurisdiction in a docketed case to another region if the location for the hearing by the Tax Court has been set in such other region, except that if the place of hearing is Washington, D.C., settlement jurisdiction shall not be transferred to the region in which Washington, D.C., is located unless the petitioner resides in and the petitioner's books and records are located (or can be made available) in that region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division. Likewise, the Chief Counsel has corresponding authority to transfer the jurisdiction, authority, and duties of the regional counsel for any region to the regional counsel of another region within which the case has been designated for trial before the Tax Court.

(3) Should a regional commissioner determine that it would better serve the interests of the Government, he or she may, by order in writing, withdraw any case not docketed before the Tax Court from the jurisdiction of the Appeals office, and provide for its disposition under his or her personal direction.

(f) Conference and practice requirements.

Practice and conference procedure before Appeals is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before Appeals:

(1) Rule I.

An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(2) Rule II.

Appeals will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views in light of the hazards which would exist if the case were litigated. However, no settlement will be made based upon nuisance value of the case to either party. If the taxpayer makes an unacceptable proposal of settlement under circumstances indicating a good faith attempt to reach an agred disposition of the case on a basis fair both to the Government and the taxpayer, the Appeals official generally should give an evaluation of the case in such a manner as to enable the taxpayer to ascertain the kind of settlement that would be recommended for acceptance. Appeals may defer action on or decline to settle some cases or issues (for example, issues on which action has been suspended nationwide) in order to achieve greater uniformity and enhance overall voluntary compliance with the tax laws.

(3) Rule III.

Where the Appeals officer recommends acceptance of the taxpayer's proposal of settlement, or, in the absence of a proposal, recommends action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in Appeals the taxpayer shall be so advised and upon written request shall be accorded a conference with such reviewing officer. The Appeals office may disregard this rule where the interest of the Government would be injured by delay, as for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(4) Rule IV.

Where the Appeals official having settlement authority and the district director deem it advisable, the district director may be represented at any Appeals conferences on a nondocketed case. This rule is also applicable to the Director, Foreign Operations District in the event his or her office issued the preliminary or '30-day letter'.

(5) Rule V.

In order to bring an unagreed income, profits, estate, gift, or Chapter 41, 42, 43, or 44 tax case in prestatutory notice status, an employment or excise tax case, a penalty case, an Employee Plans and Exempt Organization case, a termination of taxable year assessment case, a jeopardy assessment case, or an offer in compromise before the Appeals office, the taxpayer or the taxpayer's representative should first request Appeals consideration and, when required, file with the district office (including the Foreign Operations District) or service center a written protest setting forth specifically the reasons for the refusal to accept the findings. If the protest includes a statement of facts upon which the taxpayer relies, such statement should be declared, to be true under the penalties of perjury. The protest and any new facts, law, or arguments presented therewith will be reviewed by the receiving office for the purpose of deciding whether further development or action is required prior to referring the case to Appeals. Where Appeals has an issue under consideration it may, with the concurrence of the taxpayer, assume jurisdiction in a related case, after the office having original jurisdiction has completed any necessary action. The Director, Appeals Division, may authorize the regional Appeals office to accept jurisdiction (after any necessary action by office having original jurisdiction) in specified classes of cases without written protests provided written or oral requests for Appeals consideration are submitted by or for each taxpayer.

(6) Rule VI.

A taxpayer cannot withhold evidence from the district director of internal revenue and expect to introduce it for the first time before Appeals, at a conference in nondocketed status, without being subject to having the case returned to the district director for reconsideration. Where newly discovered evidence is submitted for the first time to Appeals, in a case pending in nondocketed status, that office, in the reasonable exercise of its discretion, may transmit same to the district director for his or her consideration and comment.

(7) Rule VII.

Where the taxpayer has had the benefit of a conference before the Appeals office in the prestatutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Appeals office in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

(8) Rule VIII.

In cases not docketed in the United States Tax Court on which a conference is being conducted

by the Appeals office, the district counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(9) Rule IX - Technical advice from the National Office.

(i) Definition and nature of technical advice.

(a) As used in this subparagraph, 'technical advice' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of an Appeals office in connection with the processing and consideration of a nondocketed case. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the various regions. It does not include memorandum on matters of general technical application furnished to Appeals offices where the issues are not raised in connection with the consideration and handling of a specific taxpayer's case.

(b) The provisions of this subparagraph do not apply to a case under the jurisdiction of a district director or the Bureau of Alcohol, Tobacco, and Firearms, to Employee Plans, Exempt Organization, or certain penalty cases being considered by an Appeals office, or to any case previously considered by an Appeals office. The technical advice provisions applicable to cases under the jurisdiction of a district director, other than Employee Plans and Exempt Organization cases, are set forth in Sec. 601.105(b)(5). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(c) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the consideration and

handling of a taxpayer's case. Thus, an Appeals office may, under this subparagraph, request technical advice with respect to the consideration of a request for a determination letter. The technical advice provisions applicable to a request for a determination letter in Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9).

(d) If an Appeals office is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked and it requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice. The procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the Appeals office should inform the taxpayer of its opinion that the ruling letter should be revoked. The Appeals office, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(e) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws in cases under this subparagraph. This authority has been largely redelegated to subordinate officials.

(ii) Areas in which technical advice may be requested.

(a) Appeals offices may request technical advice on any technical or procedural question that develops during the processing and consideration of a case. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) As provided in Sec. 601.105(b)(5) (ii)(b) and (iii)(a), requests for technical advice should be made at the earliest possible stage of the examination process. However, if identification of an issue on which technical advice is appropriate is not made until the case is in Appeals, a decision to request such advice (in nondocketed cases) should be made prior to or at the first conference.

(c) Subject to the provisions of (b) of this subdivision, Appeals Offices are encouraged to request technical advice on any technical or procedural question arising in connection with a case described in subdivision (i) of this subparagraph which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office.

(iii) Requesting technical advice.

(a) It is the responsibility of the Appeals Office to determine whether technical advice is to be requested on any issue being considered. However, while the case is under the jurisdiction of the Appeals Office, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the Appeals Officer is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advice the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the Appeals Officer declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (j) of this subdivision. If the Appeals Office initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he/she may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. Every effort should be made to reach agreement as to the facts and specific points at issue. If agreement cannot be reached, the taxpayer may submit,

within 10 calendar days after receipt of notice from the Appeals Office, a statement of his/her understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(d) If the taxpayer initiates the action to request advice, and his/her statement of the facts and point or points at issue are not wholly acceptable to the Appeals Office, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to such notice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. If agreement cannot be reached, both the statements of the taxpayer and the Appeals Office will be forwarded to the National Office.

(e)

(1) In the case of requests for technical advice, the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever is applicable (relating to agreement by the taxpayer with the statement of facts and points submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be informed by the Appeals Office that the statement is required. If the Appeals Office does not receive the statement within 10 days after the taxpayer has been informed of the need for the statement, the Appeals Office may decline to submit the request for technical advice. If the Appeals Office decides to request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(2) The requirements included in this subparagraph relating to the submission of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests for any

document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, he/she may submit a statement explaining his/her position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, he/she will also be informed of the right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether a conference is desired.

(i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments, or other material in support of the position that such

material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 6110 (g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases, the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice.

(a) If the taxpayer has requested referral of an issue before an Appeals Office to the National Office for technical advice, and after consideration of the request, the Appeals Officer is of the opinion that the circumstances do not warrant such referral, he/she will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the Appeals Officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why the taxpayer believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(c) The Appeals Officer will submit the statement of the taxpayer to the chief,

Appeals Office, accompanied by a statement of the officer's reasons why the issue should not be referred to the National Office. The Chief will determine, on the basis of the statements submitted, whether technical advice will be requested. If the Chief determines that technical advice is not warranted, that official will inform the taxpayer in writing that he/she proposes to deny the request. In the letter to the taxpayer the Chief will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief whether the taxpayer agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Appeals Office not to request technical advice from the National Office. However, if the taxpayer does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Appeals Division, for review. After review in the National Office, the Appeals Office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the Appeals Office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(v) Conference in the National Office.

(a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the

National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the Office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the Appeals Officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or the taxpayer's representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no 'right' of appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or the taxpayer's representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate Appeals Office. The Appeals Office will be requested to give the matter prompt attention, will verify the additional facts and data, and will comment on it to the extent deemed appropriate.

(e) A taxpayer or the taxpayer's representative desiring to obtain information as

to the status of the case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

TELEPHONE NUMBERS (AREA CODE 202) Official:

Director, Corporation Tax Division - 566-4504 or 566-4505

Director, Individual Tax Division - 566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office.

(a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivision (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the Appeals office and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the 'technical advice memorandum') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the Appeals office. The discussion of the issues will be in such detail that the Appeals office is apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice, pursuant to section 6110(f)(1) of the Code, of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code) which the Appeals office shall forward to the

taxpayer at such time that it furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subdivision and subdivision (vii)(b) of this subparagraph.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the Appeals office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the Appeals office. However, in the case of technical advice memorandums described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical advice memorandum shall not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum, the taxpayer, if desiring to protest the disclosure of certain information in the memorandum, must, within 20 days after the notice is mailed, submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally, the Internal Revenue Service will not consider the deletion of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the Appeals office, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion regarding the deletions to be made.

(vii) Action on technical advice in Appeals offices.

(a) Unless the Chief, Appeals Office, feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and

promptly requests such reconsideration, the Appeals office will proceed to process the taxpayer's case taking into account the conclusions expressed in the technical advice memorandum. The effect of technical advice on the taxpayer's case is set forth in subdivision (viii) of this subparagraph.

(b) The Appeals office will furnish the taxpayer a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third-party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memorandums involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph (except to the extent provided in subdivision (vi)(e) of this subparagraph) or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the Appeals office that it should not furnish a copy of the technical advice memorandum to the taxpayer, the Appeals office will so inform the taxpayer if he/she requests a copy.

(viii) Effect of technical advice.

(a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting Service officials in the closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner or Deputy Assisitant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally

not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 601.201(l)(7) and Sec. 601.201(l)(8).

(c) The Appeals office is bound by technical advice favorable to the taxpayer. However, if the technical advice is unfavorable to the taxpayer, the Appeals office may settle the issue in the usual manner under existing authority. For the effect of technical advice in Employee Plans and Exempt Organization cases see Sec. 601.201(n)(9)(viii).

(d) In connection with section 446 of the Code, taxpayers may request permission from the Assistant Commissioner (Technical) to change a method of accounting and obtain a 10-year (or less) spread of the resulting adjustments. Such a request should be made prior to or at the first Appeals conference. The Appeals office has authority to allow a change and the resulting spread without referring the case to Technical.

(e) Technical advice memorandums often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Sec. 01.601(d)(2)(i)(a) and 601.601(d)(2)(v).

(f) An Appeals office may raise an issue in a taxable period, even though technical advice may have been asked for and furnished with regard to the same or a similar issue in any other taxable period.

(g) Limitation on the jurisdiction and function of Appeals.

(1) Overpayment of more than $200,000.

If Appeals determines that there is an overpayment of income, war profits, excess profits, estate, generation-skipping transfer, or gift tax, or any tax imposed by chapters 41 through 44, including penalties and interest, in excess of $200,000, such determination will be considered by the Joint Committee on Taxation, See Sec. 601.108

(2) Offers in compromise.

For jurisdiction of Appeals with respect to offers in compromise of tax liabilities, see Sec. 601.203.

(3) Closing agreements.

For jurisdiction of Appeals with respect to closing agreements under section 7121 of the Code relating to any internal revenue tax liability, see Sec. 601.202.

(h) Reopening closed cases not docketed in the Tax Court.

(1) A case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both the Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculations, and then only with the approval of the Regional Director of Appeals.

(2) Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both Appeals and the taxpayer may be reopened upon written application from the taxpayer, and only with the approval of the Regional Director of Appeals. The processing of an application for a tentative carryback adjustment or of a claim for refund or credit for an overassessment (for a year involved in the prior closing) attributable to a claimed deduction or credit for a carryback provided by law, and not included in a previous Appeals determination, shall not be considered a reopening requiring approval. A subsequent assessment of an excessive tentative allowance shall likewise not be considered such a reopening. The Director of the Appeals Division may authorize, in advance, the reopening of similar classes of cases where legislative enactments or compelling administrative reasons require such advance approval.

(3) A case not docketed in the Tax Court and closed by Appeals on a basis not involving concessions made by both Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, an important mistake in mathematical calculation, or such other circumstance that indicates that failure to take such action would be a serious administrative omission, and then only with the approval of the Regional Director of Appeals.

(4) A case not docketed in the Tax Court and closed by the Appeals on a basis not involving concessions made by both Appeals and the taxpayer may be reopened by the taxpayer by any appropriate means, such as by the filing of a timely claim for refund.

(i) Special procedures for crude oil windfall profit tax cases.

For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405.

(5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A

Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

U.S. Code as of: 01/03/05

Section 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public -

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted

by the agency; and
(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying -

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by

this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if -

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to -

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that -

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section -

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall

take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall -

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests -

(I) the need to search for and collect the requested records

from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records -

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure -

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means -

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an

agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(b) This section does not apply to matters that are -

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an

agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and -

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include -

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under

subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of

subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term -

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including -

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

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U.S. Code as of: 01/03/05

Section 552a. Records maintained on individuals

(a) Definitions. - For purposes of this section -
(1) the term "agency" means agency as defined in section 552(e)(!1) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;
(3) the term "maintain" includes maintain, collect, use, or disseminate;
(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying

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number, symbol, or other identifying particular assigned to the individual;
(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;
(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;
(8) the term "matching program" -
(A) means any computerized comparison of -
(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of -
(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or
(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include -
(i) matches performed to produce aggregate statistical data without any personal identifiers;
(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;
(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;
(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept

program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches -

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of Disclosure. - No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be -

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) Accounting of Certain Disclosures. - Each agency, with respect to each system of records under its control, shall -
(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of -
(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and
(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;
(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and
(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records. - Each agency that maintains a system of records shall -
(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;
(2) permit the individual to request amendment of a record pertaining to him and -
(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and
(B) promptly, either -
(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or
(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements. - Each agency that maintains a system of records shall -

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual -

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any

part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include -
(A) the name and location of the system;
(B) the categories of individuals on whom records are maintained in the system;
(C) the categories of records maintained in the system;
(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;
(F) the title and business address of the agency official who is responsible for the system of records;
(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and
(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;
(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;
(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;
(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;
(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this

section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency Rules. - In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall -

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form

available to the public at low cost.
(g)(1) Civil Remedies. - Whenever any agency
(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;
(B) refuses to comply with an individual request under subsection (d)(1) of this section;
(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or
(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.
(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.
(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.
(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.
(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.
(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of -

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians. - For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal Penalties. - Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General Exemptions. - The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2),

(e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is -

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions. - The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is -

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) Archival Records. - Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) Government Contractors. - When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists. - An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching Agreements. - (1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying -

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to -

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients,

holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall -

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if -

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with

the agreement.

(p) Verification and Opportunity to Contest Findings. - (1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until -

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that -

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of -

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions. - (1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless -

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on New Systems and Matching Programs. - Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial Report. - The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report -

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) Effect of Other Laws. - No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards. - (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board -

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including -

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities

that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.(!2)

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.
(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.
(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.
(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that -
(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;
(ii) there is adequate evidence that the matching agreement will be cost-effective; and
(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).
(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.
(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.
(v) Office of Management and Budget Responsibilities. - The Director of the Office of Management and Budget shall -

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

Previous **[Notes]** **Next**

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United States v. Lopez, 514 U.S. 549, 115 S.Ct. 1624 (1995)

Supreme Court of the United States

UNITED STATES, Petitioner

v.

Alfonso LOPEZ, Jr.

No. 93-1260.

Decided April 26, 1995.

Defendant was convicted in the United States District Court for the Western District of Texas, H.F. Garcia, J., of possessing firearm in school zone in violation of Gun-Free School Zones Act, and he appealed. The Court of Appeals for the Fifth Circuit, Garwood, Circuit Judge, 2 F.3d 1342, reversed and remanded with directions, and government petitioned for certiorari review. After granting certiorari, 114 S.Ct. 1536, the United States Supreme Court, Chief Justice Rehnquist, held that Gun-Free School Zones Act, making it federal offense for any individual knowingly to possess firearm at place that individual knows or has reasonable cause to believe is school zone, exceeded Congress' commerce clause authority, since possession of gun in local school zone was not economic activity that substantially affected interstate commerce.

Affirmed.

Justice Kennedy filed concurring opinion in which Justice O'Connor joined.

Justice Thomas filed concurring opinion.

Justices Stevens and Souter filed dissenting opinions.

Justice Breyer filed dissenting opinion, in which Justices Stevens, Souter and Ginsburg joined.

2 F.3d 1342, (CA5 1993), affirmed.

REHNQUIST, C.J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., filed a concurring opinion, in which O'CONNOR, J., joined, *post,* p. 1634. THOMAS, J., filed a concurring opinion, *post,* p. 1642. STEVENS, J., *post,* p. 1651, and SOUTER, J., *post,* p. 1651, filed dissenting opinions. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined, *post,* p. 1657.

Chief Justice REHNQUIST delivered the opinion of the Court.

In the Gun-Free School Zones Act of 1990, Congress made it a federal offense "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V). The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. We hold that the Act exceeds the authority of Congress "[t]o regulate Commerce ... among the several States...." U.S. Const., Art. I, § 8, cl. 3.

On March 10, 1992, respondent, who was then a 12th-grade student, arrived at Edison High School in San Antonio, Texas, carrying a concealed .38-caliber handgun and five bullets. Acting upon an anonymous tip, school authorities confronted respondent, who admitted that he was carrying the weapon. He was arrested and charged under Texas law with firearm possession on school premises. See Tex.Penal Code Ann. § 46.03 (a)(1) (Supp.1994). The next day, the state charges were dismissed after federal agents charged respondent by complaint with violating the Gun-Free School Zones Act of 1990. 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V). [FN1]

A federal grand jury indicted respondent on one count of knowing possession of a firearm at a school zone, in violation of § 922(q). Respondent moved to dismiss his federal indictment on the ground that § 922(q) "is unconstitutional as it is beyond the power of Congress to legislate control over our public schools." The District Court denied the motion, concluding that § 922(q) "is a constitutional exercise of Congress' well-defined power to regulate activities in and affecting commerce, and the 'business' of elementary, middle and high schools ... affects interstate commerce." App. to Pet. for Cert. 55a. Respondent waived his right to a jury trial. The District Court conducted a bench trial, found him guilty of violating § 922(q), and sentenced him to six months' imprisonment and two years' supervised release.

On appeal, respondent challenged his conviction based on his claim that § 922(q) exceeded Congress' power to legislate under the Commerce Clause. The Court of Appeals for the Fifth Circuit agreed and reversed respondent's conviction. It held that, in light of what it characterized as insufficient congressional findings and legislative history, "section 922(q), in the full reach of its terms, is invalid as beyond the power of Congress under the Commerce Clause." 2 F.3d 1342, 1367-1368 (1993). Because of the importance of the issue, we granted certiorari, 511 U.S. 1029, 114 S.Ct. 1536, 128 L.Ed.2d 189 (1994), and we now affirm.

We start with first principles. The Constitution creates a Federal Government of enumerated powers. See Art. I, § 8. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." *Gregory v. Ashcroft*, 501 U.S. 452, 458, 111 S.Ct. 2395, 2400, 115 L.Ed.2d 410 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."*Ibid.*

The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, cl. 3. The Court, through Chief Justice Marshall, first defined the nature of Congress' commerce power in *Gibbons v. Ogden*, 9 Wheat. 1, 189-190, 6 L.Ed. 23 (1824):

> "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

The commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Id.,* at 196. The *Gibbons* Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause.

> "It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.
>
> "Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one.... The enumeration presupposes something not enumerated; and that something, if we regard the language, or the subject of the sentence, must be the exclusively internal commerce of a State." *Id.,* at 194-195.

For nearly a century thereafter, the Court's Commerce Clause decisions dealt but rarely with the extent of Congress' power, and almost entirely with the Commerce Clause as a limit on state legislation that discriminated against interstate commerce. See, *e.g., Veazie v. Moor,* 14 How. 568, 573-575, 14 L.Ed. 545 (1853) (upholding a state-created steamboat monopoly because it involved regulation of wholly internal commerce); *Kidd v. Pearson,* 128 U.S. 1, 17, 20-22, 9 S.Ct. 6, 9-10, 32 L.Ed. 346 (1888) (upholding a state prohibition on the manufacture of intoxicating liquor because the commerce power "does not comprehend the purely internal domestic commerce of a State which is carried on between man and man within a State or between different parts of the same State"); see also L. Tribe, American Constitutional Law 306 (2d ed. 1988). Under this line of precedent, the Court held that certain categories of activity such as "production," "manufacturing," and "mining" were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause. See *Wickard v. Filburn,* 317 U.S. 111, 121, 63 S.Ct. 82, 87, 87 L.Ed. 122 (1942) (describing development of Commerce Clause jurisprudence).

In 1887, Congress enacted the Interstate Commerce Act, 24 Stat. 379, and in 1890, Congress enacted the Sherman Antitrust Act, 26 Stat. 209, as amended, 15 U.S.C. § 1 *et seq.* These laws ushered in a new era of federal regulation under the commerce power. When cases involving these laws first reached this Court, we imported from our negative Commerce Clause cases the approach that Congress could not regulate activities such as "production," "manufacturing," and "mining." See, *e.g., United States v. E.C. Knight Co.,* 156 U.S. 1, 12, 15 S.Ct. 249, 253-254, 39 L.Ed. 325 (1895) ("Commerce succeeds to manufacture, and is not part of it"); *Carter v. Carter Coal Co.,* 298 U.S. 238, 304, 56 S.Ct. 855, 869, 80 L.Ed. 1160 (1936) ("Mining brings the subject matter of commerce into existence. Commerce disposes of it"). Simultaneously, however, the Court held that, where the interstate and intrastate aspects of commerce were so mingled together that full regulation of interstate commerce required incidental regulation of intrastate commerce, the Commerce Clause authorized such regulation. See, *e.g., Shreveport Rate Cases,* 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914).

In *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 550, 55 S.Ct. 837, 851-52, 79 L.Ed. 1570

(1935), the Court struck down regulations that fixed the hours and wages of individuals employed by an intrastate business because the activity being regulated related to interstate commerce only indirectly. In doing so, the Court characterized the distinction between direct and indirect effects of intrastate transactions upon interstate commerce as "a fundamental one, essential to the maintenance of our constitutional system." *Id.,* at 548, 55 S.Ct., at 851. Activities that affected interstate commerce directly were within Congress' power; activities that affected interstate commerce indirectly were beyond Congress' reach. *Id.,* at 546, 55 S. Ct., at 850. The justification for this formal distinction was rooted in the fear that otherwise "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government." *Id.,* at 548, 55 S.Ct., at 851.

Two years later, in the watershed case of *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937), the Court upheld the National Labor Relations Act against a Commerce Clause challenge, and in the process, departed from the distinction between "direct" and "indirect" effects on interstate commerce. *Id.,* at 36-38, 57 S.Ct., at 623-624 ("The question [of the scope of Congress' power] is necessarily one of degree"). The Court held that intrastate activities that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions" are within Congress' power to regulate. *Id.,* at 37, 57 S.Ct., at 624.

In *United States v. Darby,* 312 U.S. 100, 61 S.Ct. 451, 85 L.Ed. 609 (1941), the Court upheld the Fair Labor Standards Act, stating:

> "The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." *Id.,* at 118, 61 S.Ct., at 459.

See also *United States v. Wrightwood Dairy Co.,* 315 U.S. 110, 119, 62 S.Ct. 523, 526, 86 L.Ed. 726 (1942) (the commerce power "extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power").

In *Wickard v. Filburn,* the Court upheld the application of amendments to the Agricultural Adjustment Act of 1938 to the production and consumption of homegrown wheat. 317 U.S., at 128-129, 63 S.Ct., at 90-91. The *Wickard* Court explicitly rejected earlier distinctions between direct and indirect effects on interstate commerce, stating:

> "[E]ven if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.' " *Id.,* at 125, 63 S.Ct., at 89.

The *Wickard* Court emphasized that although Filburn's own contribution to the demand for wheat may have been trivial by itself, that was not "enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial." *Id.,* at 127-128, 63 S.Ct., at 90-91.

Jones & Laughlin Steel, *Darby*, and *Wickard* ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." 301 U.S., at 37, 57 S.Ct., at 624; see also *Darby*, *supra*, 312 U.S., at 119-120, 61 S.Ct., at 459-460 (Congress may regulate intrastate activity that has a "substantial effect" on interstate commerce); *Wickard*, *supra*, at 125, 63 S.Ct., at 89 (Congress may regulate activity that "exerts a substantial economic effect on interstate commerce"). Since that time, the Court has heeded that warning and undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce. See, *e.g.*, *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276-280, 101 S.Ct. 2352, 2360-2361, 69 L.Ed.2d 1 (1981); *Perez v. United States*, 402 U.S. 146, 155-156, 91 S.Ct. 1357, 1362, 28 L.Ed.2d 686 (1971); *Katzenbach v. McClung*, 379 U.S. 294, 299-301, 85 S.Ct. 377, 381-382, 13 L.Ed.2d 290 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252-253, 85 S.Ct. 348, 354-355, 13 L.Ed.2d 258 (1964). [FN2]

Similarly, in *Maryland v. Wirtz*, 392 U.S. 183, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968), the Court reaffirmed that "the power to regulate commerce, though broad indeed, has limits" that "[t]he Court has ample power" to enforce. *Id.*, at 196, 88 S.Ct., at 2023-2024, overruled on other grounds, *National League of Cities v. Usery*, 426 U.S. 833, 96 S.Ct. 2465, 49 L.Ed.2d 245 (1976), overruled by *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985). In response to the dissent's warnings that the Court was powerless to enforce the limitations on Congress' commerce powers because "[a]ll activities affecting commerce, even in the minutest degree, *[Wickard]*, may be regulated and controlled by Congress," 392 U.S., at 204, 88 S.Ct., at 2028 (Douglas, J., dissenting), the *Wirtz* Court replied that the dissent had misread precedent as "[n]either here nor in *Wickard* has the Court declared that Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities," *id.*, at 197, n. 27, 63 S.Ct., at 89-90, n. 27. Rather, "[t]he Court has said only that where *a general regulatory statute bears a substantial relation to commerce*, the *de minimis* character of individual instances arising under that statute is of no consequence." *Ibid.* (first emphasis added).

Consistent with this structure, we have identified three broad categories of activity that Congress may regulate under its commerce power. *Perez*, *supra*, at 150, 91 S.Ct., at 1359; see also *Hodel*, *supra*, at 276-277, 101 S.Ct., at 2360-2361. First, Congress may regulate the use of the channels of interstate commerce. See, *e.g.*, *Darby*, 312 U.S., at 114, 61 S.Ct., at 457; *Heart of Atlanta Motel*, *supra*, at 256, 85 S.Ct., at 357 (" '[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.' " (quoting *Caminetti v. United States*, 242 U.S. 470, 491, 37 S.Ct. 192, 197, 61 L.Ed. 442 (1917))). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. See, *e.g.*, *Shreveport Rate Cases*, 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914); *Southern R. Co. v. United States*, 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72

(1911) (upholding amendments to Safety Appliance Act as applied to vehicles used in intrastate commerce); *Perez, supra,* at 150, 91 S.Ct., at 1359 ("[F]or example, the destruction of an aircraft (18 U.S.C. § 32), or ... thefts from interstate shipments (18 U.S.C. § 659)"). Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *Jones & Laughlin Steel,* 301 U.S., at 37, 57 S.Ct., at 624, *i.e.*, those activities that substantially affect interstate commerce, *Wirtz, supra,* at 196, n. 27, 88 S.Ct., at 2024, n. 27.

Within this final category, admittedly, our case law has not been clear whether an activity must "affect" or "substantially affect" interstate commerce in order to be within Congress' power to regulate it under the Commerce Clause. Compare *Preseault v. ICC,* 494 U.S. 1, 17, 110 S.Ct. 914, 924-925, 108 L.Ed.2d 1 (1990), with *Wirtz, supra,* at 196, n. 27, 88 S.Ct., at 2024, n. 27 (the Court has never declared that "Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities"). We conclude, consistent with the great weight of our case law, that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce.

We now turn to consider the power of Congress, in the light of this framework, to enact § 922(q). The first two categories of authority may be quickly disposed of: § 922(q) is not a regulation of the use of the channels of interstate commerce, nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of commerce; nor can § 922(q) be justified as a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce. Thus, if § 922 (q) is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

First, we have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce. Examples include the regulation of intrastate coal mining; *Hodel, supra,* intrastate extortionate credit transactions, *Perez, supra,* restaurants utilizing substantial interstate supplies, *McClung, supra,* inns and hotels catering to interstate guests, *Heart of Atlanta Motel, supra,* and production and consumption of homegrown wheat, *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942). These examples are by no means exhaustive, but the pattern is clear. Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.

Even *Wickard,* which is perhaps the most far reaching example of Commerce Clause authority over intrastate activity, involved economic activity in a way that the possession of a gun in a school zone does not. Roscoe Filburn operated a small farm in Ohio, on which, in the year involved, he raised 23 acres of wheat. It was his practice to sow winter wheat in the fall, and after harvesting it in July to sell a portion of the crop, to feed part of it to poultry and livestock on the farm, to use some in making flour for home consumption, and to keep the remainder for seeding future crops. The Secretary of Agriculture assessed a penalty against him under the Agricultural Adjustment Act of 1938 because he harvested about 12 acres more wheat than his allotment under the Act permitted. The Act was designed to regulate the volume of wheat moving in interstate and foreign commerce in order to avoid surpluses and shortages, and concomitant fluctuation in wheat prices, which had previously obtained. The Court said, in an opinion sustaining the application of the Act to Filburn's activity:

> "One of the primary purposes of the Act in question was to increase the market price of wheat and to that end to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial

> influence on price and market conditions. This may arise because being in marketable condition such wheat overhangs the market and, if induced by rising prices, tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce." 317 U.S., at 128, 63 S.Ct., at 90- 91.

Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly one might define those terms. [FN3] Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

Second, § 922(q) contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce. For example, in *United States v. Bass*, 404 U. S. 336, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971), the Court interpreted former 18 U.S.C. § 1202(a), which made it a crime for a felon to "receiv[e], posses[s], or transpor[t] in commerce or affecting commerce ... any firearm." 404 U.S., at 337, 92 S.Ct., at 517. The Court interpreted the possession component of § 1202(a) to require an additional nexus to interstate commerce both because the statute was ambiguous and because "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." *Id.*, at 349, 92 S.Ct., at 523. The *Bass* Court set aside the conviction because, although the Government had demonstrated that Bass had possessed a firearm, it had failed "to show the requisite nexus with interstate commerce." *Id.*, at 347, 92 S.Ct., at 522. The Court thus interpreted the statute to reserve the constitutional question whether Congress could regulate, without more, the "mere possession" of firearms. See *id.*, at 339, n. 4, 92 S.Ct., at 518, n. 4; see also *United States v. Five Gambling Devices*, 346 U.S. 441, 448, 74 S.Ct. 190, 194, 98 L.Ed. 179 (1953) (plurality opinion) ("The principle is old and deeply imbedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative"). Unlike the statute in *Bass*, § 922(q) has no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce.

Although as part of our independent evaluation of constitutionality under the Commerce Clause we of course consider legislative findings, and indeed even congressional committee findings, regarding effect on interstate commerce, see, *e.g., Preseault v. ICC*, 494 U.S., at 17, 110 S.Ct., at 924- 925, (1990), the Government concedes that "[n]either the statute nor its legislative history contain[s] express congressional findings regarding the effects upon interstate commerce of gun possession in a school zone." Brief for United States 5-6. We agree with the Government that Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce. See *McClung*, 379 U.S., at 304, 85 S.Ct., at 383-384; see also *Perez*, 402 U.S., at 156, 91 S.Ct., at 1362 ("Congress need [not] make particularized findings in order to legislate"). But to the extent that congressional findings would enable us to evaluate the legislative judgment that the activity in question substantially affected interstate commerce, even though no such substantial effect was visible to the naked eye, they are lacking here. [FN4]

The Government argues that Congress has accumulated institutional expertise regarding the regulation of firearms through previous enactments. Cf. *Fullilove v. Klutznick*, 448 U.S. 448, 503, 100 S.Ct. 2758, 2787, 65 L.Ed.2d 902 (1980) (Powell, J., concurring). We agree, however, with the Fifth Circuit that importation of previous findings to justify § 922(q) is especially inappropriate here because the "prior federal enactments or

Congressional findings [do not] speak to the subject matter of section 922(q) or its relationship to interstate commerce. Indeed, section 922(q) plows thoroughly new ground and represents a sharp break with the long-standing pattern of federal firearms legislation." 2 F.3d, at 1366.

The Government's essential contention, *in fine*, is that we may determine here that § 922(q) is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. Brief for United States 17. The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. See *United States v. Evans*, 928 F.2d 858, 862 (CA9 1991). Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. Cf. *Heart of Atlanta Motel*, 379 U.S., at 253, 85 S.Ct., at 355. The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that § 922(q) substantially affects interstate commerce.

We pause to consider the implications of the Government's arguments. The Government admits, under its "costs of crime" reasoning, that Congress could regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce. See Tr. of Oral Arg. 8-9. Similarly, under the Government's "national productivity" reasoning, Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the theories that the Government presents in support of § 922(q), it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

Although Justice BREYER argues that acceptance of the Government's rationales would not authorize a general federal police power, he is unable to identify any activity that the States may regulate but Congress may not. Justice BREYER posits that there might be some limitations on Congress' commerce power, such as family law or certain aspects of education. *Post*, at 1661-1662. These suggested limitations, when viewed in light of the dissent's expansive analysis, are devoid of substance.

Justice BREYER focuses, for the most part, on the threat that firearm possession in and near schools poses to the educational process and the potential economic consequences flowing from that threat. *Post*, at 1659-1662. Specifically, the dissent reasons that (1) gun-related violence is a serious problem; (2) that problem, in turn, has an adverse effect on classroom learning; and (3) that adverse effect on classroom learning, in turn, represents a substantial threat to trade and commerce. *Post*, at 1661. This analysis would be equally applicable, if not more so, to subjects such as family law and direct regulation of education.

For instance, if Congress can, pursuant to its Commerce Clause power, regulate activities that adversely affect the learning environment, then, *a fortiori*, it also can regulate the educational process directly. Congress could determine that a school's curriculum has a "significant" effect on the extent of classroom learning. As a result, Congress could mandate a federal curriculum for local elementary and secondary schools because what is taught in local schools has a significant "effect on classroom learning," cf. *post*, at

1661, and that, in turn, has a substantial effect on interstate commerce.

Justice BREYER rejects our reading of precedent and argues that "Congress ... could rationally conclude that schools fall on the commercial side of the line." *Post,* at 1664. Again, Justice BREYER's rationale lacks any real limits because, depending on the level of generality, any activity can be looked upon as commercial. Under the dissent's rationale, Congress could just as easily look at child rearing as "fall[ing] on the commercial side of the line" because it provides a "valuable service--namely, to equip [children] with the skills they need to survive in life and, more specifically, in the workplace." *Ibid.* We do not doubt that Congress has authority under the Commerce Clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect the educational process. That authority, though broad, does not include the authority to regulate each and every aspect of local schools.

Admittedly, a determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress' authority is limited to those powers enumerated in the Constitution, and so long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender "legal uncertainty." *Post,* at 1664. As Chief Justice Marshall stated in *McCulloch v. Maryland,* 4 Wheat. 316, 4 L.Ed. 579 (1819):

> "Th[e] [federal] government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it ... is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist." *Id.,* at 405.

See also *Gibbons v. Ogden,* 9 Wheat., at 195 ("The enumeration presupposes something not enumerated"). The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. See Art. I, § 8. Congress has operated within this framework of legal uncertainty ever since this Court determined that it was the Judiciary's duty "to say what the law is."*Marbury v. Madison,* 1 Cranch 137, 177, 2 L.Ed. 60 (1803) (Marshall, C.J.). Any possible benefit from eliminating this "legal uncertainty" would be at the expense of the Constitution's system of enumerated powers.

In *Jones & Laughlin Steel,* 301 U.S., at 37, 57 S.Ct., at 624, we held that the question of congressional power under the Commerce Clause "is necessarily one of degree." To the same effect is the concurring opinion of Justice Cardozo in *Schechter Poultry:*

> "There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours 'is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.' " 295 U.S., at 554, 55 S.Ct., at 85 (quoting *United States v. A.L.A. Schechter Poultry Corp.,* 76 F.2d 617, 624 (CA2 1935) (L. Hand, J., concurring)).

These are not precise formulations, and in the nature of things they cannot be. But we think they point the way to a correct decision of this case. The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently

moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. See *supra,* at 1629. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, cf. *Gibbons v. Ogden, supra,* at 195, and that there never will be a distinction between what is truly national and what is truly local, cf. *Jones & Laughlin Steel, supra,* at 30, 57 S.Ct., at 621. This we are unwilling to do.

For the foregoing reasons the judgment of the Court of Appeals is

Affirmed.

Justice KENNEDY, with whom Justice O'CONNOR joins, concurring.

The history of the judicial struggle to interpret the Commerce Clause during the transition from the economic system the Founders knew to the single, national market still emergent in our own era counsels great restraint before the Court determines that the Clause is insufficient to support an exercise of the national power. That history gives me some pause about today's decision, but I join the Court's opinion with these observations on what I conceive to be its necessary though limited holding.

Chief Justice Marshall announced that the national authority reaches "that commerce which concerns more States than one" and that the commerce power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons v. Ogden,* 9 Wheat. 1, 194, 196, 6 L.Ed. 23 (1824). His statements can be understood now as an early and authoritative recognition that the Commerce Clause grants Congress extensive power and ample discretion to determine its appropriate exercise. The progression of our Commerce Clause cases from *Gibbons* to the present was not marked, however, by a coherent or consistent course of interpretation; for neither the course of technological advance nor the foundational principles for the jurisprudence itself were self-evident to the courts that sought to resolve contemporary disputes by enduring principles.

Furthermore, for almost a century after the adoption of the Constitution, the Court's Commerce Clause decisions did not concern the authority of Congress to legislate. Rather, the Court faced the related but quite distinct question of the authority of the States to regulate matters that would be within the commerce power had Congress chosen to act. The simple fact was that in the early years of the Republic, Congress seldom perceived the necessity to exercise its power in circumstances where its authority would be called into question. The Court's initial task, therefore, was to elaborate the theories that would permit the States to act where Congress had not done so. Not the least part of the problem was the unresolved question whether the congressional power was exclusive, a question reserved by Chief Justice Marshall in *Gibbons v. Ogden, supra,* at 209-210.

At the midpoint of the 19th century, the Court embraced the principle that the States and the National

Government both have authority to regulate certain matters absent the congressional determination to displace local law or the necessity for the Court to invalidate local law because of the dormant national power. *Cooley v. Board of Wardens of Port of Philadelphia, ex rel. Soc. for Relief of Distressed Pilots,* 12 How. 299, 318-321, 13 L.Ed. 996 (1852). But the utility of that solution was not at once apparent, see generally F. Frankfurter, The Commerce Clause under Marshall, Taney and Waite (1937) (hereinafter Frankfurter), and difficulties of application persisted, see *Leisy v. Hardin,* 135 U.S. 100, 122-125, 10 S.Ct. 681, 688-690, 34 L.Ed. 128 (1890).

One approach the Court used to inquire into the lawfulness of state authority was to draw content-based or subject-matter distinctions, thus defining by semantic or formalistic categories those activities that were commerce and those that were not. For instance, in deciding that a State could prohibit the in-state manufacture of liquor intended for out-of-state shipment, it distinguished between manufacture and commerce. "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactur[e] and commerce. Manufacture is transformation--the fashioning of raw materials into a change of form for use. The functions of commerce are different." *Kidd v. Pearson,* 128 U.S. 1, 20, 9 S.Ct. 6, 10, 32 L.Ed. 346 (1888). Though that approach likely would not have survived even if confined to the question of a State's authority to enact legislation, it was not at all propitious when applied to the quite different question of what subjects were within the reach of the national power when Congress chose to exercise it.

This became evident when the Court began to confront federal economic regulation enacted in response to the rapid industrial development in the late 19th century. Thus, it relied upon the manufacture-commerce dichotomy in *United States v. E.C. Knight Co.,* 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325 (1895), where a manufacturers' combination controlling some 98% of the Nation's domestic sugar refining capacity was held to be outside the reach of the Sherman Act. Conspiracies to control manufacture, agriculture, mining, production, wages, or prices, the Court explained, had too "indirect" an effect on interstate commerce. *Id.,* at 16, 15 S.Ct., at 255. And in *Adair v. United States,* 208 U.S. 161, 28 S.Ct. 277, 52 L.Ed. 436 (1908), the Court rejected the view that the commerce power might extend to activities that, although local in the sense of having originated within a single State, nevertheless had a practical effect on interstate commercial activity. The Court concluded that there was not a "legal or logical connection ... between an employee's membership in a labor organization and the carrying on of interstate commerce," *id.,* at 178, 28 S.Ct., at 282, and struck down a federal statute forbidding the discharge of an employee because of his membership in a labor organization. See also *The Employers' Liability Cases,* 207 U.S. 463, 497, 28 S.Ct. 141, 145, 52 L.Ed. 297 (1908) (invalidating statute creating negligence action against common carriers for personal injuries of employees sustained in the course of employment, because the statute "regulates the persons because they engage in interstate commerce and does not alone regulate the business of interstate commerce").

Even before the Court committed itself to sustaining federal legislation on broad principles of economic practicality, it found it necessary to depart from these decisions. The Court disavowed *E.C. Knight* 's reliance on the manufacturing-commerce distinction in *Standard Oil Co. of N.J. v. United States,* 221 U.S. 1, 68-69, 31 S.Ct. 502, 518-519, 55 L.Ed. 619 (1911), declaring that approach "unsound." The Court likewise rejected the rationale of *Adair* when it decided, in *Texas & New Orleans R. Co. v. Railway Clerks,* 281 U.S. 548, 570-571, 50 S.Ct. 427, 433-434, 74 L.Ed. 1034 (1930), that Congress had the power to regulate matters pertaining to the organization of railroad workers.

In another line of cases, the Court addressed Congress' efforts to impede local activities it considered undesirable by prohibiting the interstate movement of some essential element. In the *Lottery Case,* 188 U.S. 321, 23 S.Ct. 321, 47 L.Ed. 492 (1903), the Court rejected the argument that Congress lacked power to

prohibit the interstate movement of lottery tickets because it had power only to regulate, not to prohibit. See also *Hipolite Egg Co. v. United States,* 220 U.S. 45, 31 S.Ct. 364, 55 L.Ed. 364 (1911); *Hoke v. United States,* 227 U.S. 308, 33 S.Ct. 281, 57 L.Ed. 523 (1913). In *Hammer v. Dagenhart,* 247 U.S. 251, 38 S.Ct. 529, 62 L.Ed. 1101 (1918), however, the Court insisted that the power to regulate commerce "is directly the contrary of the assumed right to forbid commerce from moving," *id.,* at 269-270, 38 S.Ct., at 530, and struck down a prohibition on the interstate transportation of goods manufactured in violation of child labor laws.

Even while it was experiencing difficulties in finding satisfactory principles in these cases, the Court was pursuing a more sustainable and practical approach in other lines of decisions, particularly those involving the regulation of railroad rates. In the *Minnesota Rate Cases,* 230 U.S. 352, 33 S.Ct. 729, 57 L.Ed. 1511 (1913), the Court upheld a state rate order, but observed that Congress might be empowered to regulate in this area if "by reason of the interblending of the interstate and intrastate operations of interstate carriers" the regulation of interstate rates could not be maintained without restrictions on "intrastate rates which substantially affect the former." *Id.,* at 432-433, 33 S.Ct., at 753-754. And in the *Shreveport Rate Cases,* 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914), the Court upheld an Interstate Commerce Commission order fixing railroad rates with the explanation that congressional authority, "extending to these interstate carriers as instruments of interstate commerce, necessarily embraces the right to control their operations in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance." *Id.,* at 351, 34 S.Ct., at 836.

Even the most confined interpretation of "commerce" would embrace transportation between the States, so the rate cases posed much less difficulty for the Court than cases involving manufacture or production. Nevertheless, the Court's recognition of the importance of a practical conception of the commerce power was not altogether confined to the rate cases. In *Swift & Co. v. United States,* 196 U.S. 375, 25 S.Ct. 276, 49 L. Ed. 518 (1905), the Court upheld the application of federal antitrust law to a combination of meat dealers that occurred in one State but that restrained trade in cattle "sent for sale from a place in one State, with the expectation that they will end their transit ... in another." *Id.,* at 398, 25 S.Ct., at 280. The Court explained that "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Ibid.* Chief Justice Taft followed the same approach in upholding federal regulation of stockyards in *Stafford v. Wallace,* 258 U.S. 495, 42 S.Ct. 397, 66 L.Ed. 735 (1922). Speaking for the Court, he rejected a "nice and technical inquiry," *id.,* at 519, 42 S.Ct., at 403, when the local transactions at issue could not "be separated from the movement to which they contribute," *id.,* at 516, 42 S.Ct., at 402.

Reluctance of the Court to adopt that approach in all of its cases caused inconsistencies in doctrine to persist, however. In addressing New Deal legislation the Court resuscitated the abandoned abstract distinction between direct and indirect effects on interstate commerce. See *Carter v. Carter Coal Co.,* 298 U.S. 238, 309, 56 S.Ct. 855, 872, 80 L.Ed. 1160 (1936) (Act regulating price of coal and wages and hours for miners held to have only "secondary and indirect" effect on interstate commerce); *Railroad Retirement Bd. v. Alton R. Co.,* 295 U.S. 330, 368, 55 S.Ct. 758, 771, 79 L.Ed. 1468 (1935) (compulsory retirement and pension plan for railroad carrier employees too "remote from any regulation of commerce as such"); *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 548, 55 S.Ct. 837, 851, 79 L.Ed. 1570 (1935) (wage and hour law provision of National Industrial Recovery Act had "no direct relation to interstate commerce").

The case that seems to mark the Court's definitive commitment to the practical conception of the commerce power is *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937), where the

Court sustained labor laws that applied to manufacturing facilities, making no real attempt to distinguish *Carter, supra,* and *Schechter, supra.* 301 U.S., at 40- 41, 57 S.Ct., at 625-626. The deference given to Congress has since been confirmed. *United States v. Darby,* 312 U.S. 100, 116-117, 61 S.Ct. 451, 458-459, 85 L.Ed. 609 (1941), overruled *Hammer v. Dagenhart, supra.* And in *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), the Court disapproved *E.C. Knight* and the entire line of direct-indirect and manufacture-production cases, explaining that "broader interpretations of the Commerce Clause [were] destined to supersede the earlier ones," at 122, 63 S.Ct., at 88, and "[w]hatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution," *id.,* at 123, n. 24, 63 S.Ct., at 88, n. 24. Later examples of the exercise of federal power where commercial transactions were the subject of regulation include *Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 85 S.Ct. 348, 13 L.Ed.2d 258 (1964), *Katzenbach v. McClung,* 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964), and *Perez v. United States,* 402 U.S. 146, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971). These and like authorities are within the fair ambit of the Court's practical conception of commercial regulation and are not called in question by our decision today.

The history of our Commerce Clause decisions contains at least two lessons of relevance to this case. The first, as stated at the outset, is the imprecision of content-based boundaries used without more to define the limits of the Commerce Clause. The second, related to the first but of even greater consequence, is that the Court as an institution and the legal system as a whole have an immense stake in the stability of our Commerce Clause jurisprudence as it has evolved to this point. *Stare decisis* operates with great force in counseling us not to call in question the essential principles now in place respecting the congressional power to regulate transactions of a commercial nature. That fundamental restraint on our power forecloses us from reverting to an understanding of commerce that would serve only an 18th-century economy, dependent then upon production and trading practices that had changed but little over the preceding centuries; it also mandates against returning to the time when congressional authority to regulate undoubted commercial activities was limited by a judicial determination that those matters had an insufficient connection to an interstate system. Congress can regulate in the commercial sphere on the assumption that we have a single market and a unified purpose to build a stable national economy.

In referring to the whole subject of the federal and state balance, we said this just three Terms ago:

> "This framework has been sufficiently flexible over the past two centuries to allow for enormous changes in the nature of government. The Federal Government undertakes activities today that would have been unimaginable to the Framers in two senses: first, because the Framers would not have conceived that any government would conduct such activities; and second, because the Framers would not have believed that the Federal Government, rather than the States, would assume such responsibilities. Yet the powers conferred upon the Federal Government by the Constitution were phrased in language broad enough to allow for the expansion of the Federal Government's role." *New York v. United States,* 505 U.S. 144, 157, 112 S.Ct. 2408, 2418, 120 L.Ed.2d 120 (1992) (emphasis deleted).

It does not follow, however, that in every instance the Court lacks the authority and responsibility to review congressional attempts to alter the federal balance. This case requires us to consider our place in the design of the Government and to appreciate the significance of federalism in the whole structure of the Constitution.

Of the various structural elements in the Constitution, separation of powers, checks and balances, judicial

review, and federalism, only concerning the last does there seem to be much uncertainty respecting the existence, and the content, of standards that allow the Judiciary to play a significant role in maintaining the design contemplated by the Framers. Although the resolution of specific cases has proved difficult, we have derived from the Constitution workable standards to assist in preserving separation of powers and checks and balances. See, *e.g., Prize Cases,* 2 Black 635, 17 L.Ed. 459 (1863); *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952); *United States v. Nixon,* 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974); *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976); *INS v. Chadha,* 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983); *Bowsher v. Synar,* 478 U.S. 714, 106 S.Ct. 3181, 92 L.Ed.2d 583 (1986); *Plaut v. Spendthrift Farm, Inc.,* 514 U.S. 211, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995). These standards are by now well accepted. Judicial review is also established beyond question, *Marbury v. Madison,* 1 Cranch 137, 2 L.Ed. 60 (1803), and though we may differ when applying its principles, see, *e.g., Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 112 S.Ct. 2791, 120 L. Ed.2d 674 (1992), its legitimacy is undoubted. Our role in preserving the federal balance seems more tenuous.

There is irony in this, because of the four structural elements in the Constitution just mentioned, federalism was the unique contribution of the Framers to political science and political theory. See Friendly, Federalism: A Forward, 86 Yale L.J. 1019 (1977); G. Wood, The Creation of the American Republic, 1776-1787, pp. 524-532, 564 (1969). Though on the surface the idea may seem counterintuitive, it was the insight of the Framers that freedom was enhanced by the creation of two governments, not one. "In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself." The Federalist No. 51, p. 323 (C. Rossiter ed. 1961) (J. Madison). See also *Gregory v. Ashcroft,* 501 U.S. 452, 458-459, 111 S.Ct. 2395, 2400, 115 L.Ed.2d 410 (1991) ("Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.... In the tension between federal and state power lies the promise of liberty"); *New York v. United States, supra,* at 181, 112 S.Ct., at 2431 ("[T]he Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: 'Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power' ") (quoting *Coleman v. Thompson,* 501 U.S. 722, 759, 111 S.Ct. 2546, 2570, 115 L.Ed.2d 640 (1991) (Blackmun, J., dissenting)).

The theory that two governments accord more liberty than one requires for its realization two distinct and discernible lines of political accountability: one between the citizens and the Federal Government; the second between the citizens and the States. If, as Madison expected, the Federal and State Governments are to control each other, see The Federalist No. 51, and hold each other in check by competing for the affections of the people, see The Federalist No. 46, those citizens must have some means of knowing which of the two governments to hold accountable for the failure to perform a given function. "Federalism serves to assign political responsibility, not to obscure it." *FTC v. Ticor Title Ins. Co.,* 504 U.S. 621, 636, 112 S.Ct. 2169, 2178, 119 L.Ed.2d 410 (1992). Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory. Cf. *New York v. United States, supra,* at 155-169, 112 S.Ct., at 2417-2425; *FERC v. Mississippi,* 456 U.S. 742, 787, 102 S.Ct. 2126, 2152, 72 L.Ed.2d 532 (1982) (O'CONNOR, J., concurring in judgment in part and dissenting in part). The resultant inability to hold either branch of the government answerable to the citizens is more dangerous even than devolving too much authority to the remote central

power.

To be sure, one conclusion that could be drawn from The Federalist Papers is that the balance between national and state power is entrusted in its entirety to the political process. Madison's observation that "the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due," The Federalist No. 46, p. 295 (C. Rossiter ed. 1961), can be interpreted to say that the essence of responsibility for a shift in power from the State to the Federal Government rests upon a political judgment, though he added assurance that "the State governments could have little to apprehend, because it is only within a certain sphere that the federal power can, in the nature of things, be advantageously administered," *ibid.* Whatever the judicial role, it is axiomatic that Congress does have substantial discretion and control over the federal balance.

For these reasons, it would be mistaken and mischievous for the political branches to forget that the sworn obligation to preserve and protect the Constitution in maintaining the federal balance is their own in the first and primary instance. In the Webster-Hayne Debates, see The Great Speeches and Orations of Daniel Webster 227-272 (E. Whipple ed. 1879), and the debates over the Civil Rights Acts, see Hearings on S. 1732 before the Senate Committee on Commerce, 88th Cong., 1st Sess., pts. 1-3 (1963), some Congresses have accepted responsibility to confront the great questions of the proper federal balance in terms of lasting consequences for the constitutional design. The political branches of the Government must fulfill this grave constitutional obligation if democratic liberty and the federalism that secures it are to endure.

At the same time, the absence of structural mechanisms to require those officials to undertake this principled task, and the momentary political convenience often attendant upon their failure to do so, argue against a complete renunciation of the judicial role. Although it is the obligation of all officers of the Government to respect the constitutional design, see *Public Citizen v. Department of Justice,* 491 U.S. 440, 466, 109 S.Ct. 2558, 2572-2573, 105 L.Ed.2d 377 (1989); *Rostker v. Goldberg,* 453 U.S. 57, 64, 101 S.Ct. 2646, 2651, 69 L. Ed.2d 478 (1981), the federal balance is too essential a part of our constitutional structure and plays too vital a role in securing freedom for us to admit inability to intervene when one or the other level of Government has tipped the scales too far.

In the past this Court has participated in maintaining the federal balance through judicial exposition of doctrines such as abstention, see, *e.g., Younger v. Harris,* 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971); *Railroad Comm'n of Tex. v. Pullman Co.,* 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941); *Burford v. Sun Oil Co.,* 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943), the rules for determining the primacy of state law, see, *e.g., Erie R. Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), the doctrine of adequate and independent state grounds, see, *e.g., Murdock v. Memphis,* 20 Wall. 590, 22 L.Ed. 429 (1875); *Michigan v. Long,* 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), the whole jurisprudence of preemption, see, *e.g., Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947); *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992), and many of the rules governing our habeas jurisprudence, see, *e.g., Coleman v. Thompson,* 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991); *McCleskey v. Zant,* 499 U.S. 467, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991); *Teague v. Lane,* 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989); *Rose v. Lundy,* 455 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982); *Wainwright v. Sykes,* 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977).

Our ability to preserve this principle under the Commerce Clause has presented a much greater challenge. See *supra,* at 1634-1637. "This clause has throughout the Court's history been the chief source of its adjudications regarding federalism," and "no other body of opinions affords a fairer or more revealing test of

judicial qualities." Frankfurter 66-67. But as the branch whose distinctive duty it is to declare "what the law is," *Marbury v. Madison,* 1 Cranch, at 177, we are often called upon to resolve questions of constitutional law not susceptible to the mechanical application of bright and clear lines. The substantial element of political judgment in Commerce Clause matters leaves our institutional capacity to intervene more in doubt than when we decide cases, for instance, under the Bill of Rights even though clear and bright lines are often absent in the latter class of disputes. See *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter,* 492 U.S. 573, 630, 109 S.Ct. 3086, 3120, 106 L.Ed.2d 472 (1989) (O'CONNOR, J., concurring in part and concurring in judgment) ("We cannot avoid the obligation to draw lines, often close and difficult lines" in adjudicating constitutional rights). But our cases do not teach that we have no role at all in determining the meaning of the Commerce Clause.

Our position in enforcing the dormant Commerce Clause is instructive. The Court's doctrinal approach in that area has likewise "taken some turns." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 180, 115 S.Ct. 1331, 1336, 131 L.Ed.2d 261 (1995). Yet in contrast to the prevailing skepticism that surrounds our ability to give meaning to the explicit text of the Commerce Clause, there is widespread acceptance of our authority to enforce the dormant Commerce Clause, which we have but inferred from the constitutional structure as a limitation on the power of the States. One element of our dormant Commerce Clause jurisprudence has been the principle that the States may not impose regulations that place an undue burden on interstate commerce, even where those regulations do not discriminate between in-state and out-of-state businesses. See *Brown-Forman Distillers Corp. v. New York State Liquor Authority,* 476 U.S. 573, 579, 106 S.Ct. 2080, 2084, 90 L.Ed.2d 552 (1986) (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S.Ct. 844, 847, 25 L.Ed.2d 174 (1970)). Distinguishing between regulations that do place an undue burden on interstate commerce and regulations that do not depends upon delicate judgments. True, if we invalidate a state law, Congress can in effect overturn our judgment, whereas in a case announcing that Congress has transgressed its authority, the decision is more consequential, for it stands unless Congress can revise its law to demonstrate its commercial character. This difference no doubt informs the circumspection with which we invalidate an Act of Congress, but it does not mitigate our duty to recognize meaningful limits on the commerce power of Congress.

The statute before us upsets the federal balance to a degree that renders it an unconstitutional assertion of the commerce power, and our intervention is required.As the Chief Justice explains, unlike the earlier cases to come before the Court here neither the actors nor their conduct has a commercial character, and neither the purposes nor the design of the statute has an evident commercial nexus. See *ante,* at 1630-1631. The statute makes the simple possession of a gun within 1,000 feet of the grounds of the school a criminal offense. In a sense any conduct in this interdependent world of ours has an ultimate commercial origin or consequence, but we have not yet said the commerce power may reach so far. If Congress attempts that extension, then at the least we must inquire whether the exercise of national power seeks to intrude upon an area of traditional state concern.

An interference of these dimensions occurs here, for it is well established that education is a traditional concern of the States. *Milliken v. Bradley,* 418 U.S. 717, 741-742, 94 S.Ct. 3112, 3125-3126, 41 L.Ed.2d 1069 (1974); *Epperson v. Arkansas,* 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968). The proximity to schools, including of course schools owned and operated by the States or their subdivisions, is the very premise for making the conduct criminal. In these circumstances, we have a particular duty to ensure that the federal-state balance is not destroyed. Cf. *Rice, supra,* at 230, 67 S.Ct., at 1152 ("[W]e start with the assumption that the historic police powers of the States" are not displaced by a federal statute "unless that was the clear and manifest purpose of Congress"); *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 146, 83 S.Ct. 1210, 1219, 10 L.Ed.2d 248 (1963).

While it is doubtful that any State, or indeed any reasonable person, would argue that it is wise policy to allow students to carry guns on school premises, considerable disagreement exists about how best to accomplish that goal. In this circumstance, the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear. See *San Antonio Independent School Dist. v. Rodriguez,* 411 U.S. 1, 49-50, 93 S. Ct. 1278, 1304-05, 36 L.Ed.2d 16 (1973); *New State Ice Co. v. Liebmann,* 285 U.S. 262, 311, 52 S.Ct. 371, 386-87, 76 L.Ed. 747 (1932) (Brandeis, J., dissenting).

If a State or municipality determines that harsh criminal sanctions are necessary and wise to deter students from carrying guns on school premises, the reserved powers of the States are sufficient to enact those measures. Indeed, over 40 States already have criminal laws outlawing the possession of firearms on or near school grounds. See, *e.g.,* Alaska Stat.Ann. §§ 11.61.195(a)(2)(A), 11.61.220(a)(4)(A) (Supp.1994); Cal. Penal Code Ann. § 626.9 (West Supp.1994); Mass.Gen.Laws c. 269, § 10(j) (1992); N.J.Stat.Ann. § 2C:39-5 (e) (West Supp.1994); Va.Code Ann. § 18.2-308.1 (1988); Wis.Stat. § 948.605 (1991-1992).

Other, more practicable means to rid the schools of guns may be thought by the citizens of some States to be preferable for the safety and welfare of the schools those States are charged with maintaining. See Brief for National Conference of State Legislatures et al. as *Amici Curiae* 26-30 (injection of federal officials into local problems causes friction and diminishes political accountability of state and local governments). These might include inducements to inform on violators where the information leads to arrests or confiscation of the guns, see Lima, Schools May Launch Weapons Hot Line, Los Angeles Times, Ventura County East ed., Jan. 13, 1995, p. B1, col. 5; Reward for Tips on Guns in Tucson Schools, The Arizona Republic, Jan. 7, 1995, p. B2; programs to encourage the voluntary surrender of guns with some provision for amnesty, see Zaidan, Akron Rallies to Save Youths, The Plain Dealer, Mar. 2, 1995, p. 1B; Swift, Legislators Consider Plan to Get Guns Off Streets, Hartford Courant, Apr. 29, 1992, p. A4; penalties imposed on parents or guardians for failure to supervise the child, see, *e.g.,* Okla.Stat., Tit. 21, § 858 (Supp.1995) (fining parents who allow students to possess firearm at school); Tenn.Code Ann. § 39-17-1312 (Supp.1992) (misdemeanor for parents to allow student to possess firearm at school); Straight Shooter: Gov. Casey's Reasonable Plan to Control Assault Weapons, Pittsburgh Post-Gazette, Mar. 14, 1994, p. B2 (proposed bill); Bailey, Anti-Crime Measures Top Legislators' Agenda, Los Angeles Times, Orange Cty. ed., Mar. 7, 1994, p. B1, col. 2 (same); Krupa, New Gun-Control Plans Could Tighten Local Law, The Boston Globe, June 20, 1993, p. 29; laws providing for suspension or expulsion of gun-toting students, see, *e.g.,* Ala.Code § 16-1-24.1 (Supp.1994); Ind.Code § 20-8.1-5-4(b)(1)(D) (1993); Ky.Rev.Stat.Ann. § 158.150(1)(a) (Michie 1992); Wash.Rev.Code § 9.41.280 (1994), or programs for expulsion with assignment to special facilities, see Martin, Legislators Poised to Take Harsher Stand on Guns in Schools, The Seattle Times, Feb. 1, 1995, p. B1 (automatic year-long expulsion for students with guns and intense semester-long reentry program).

The statute now before us forecloses the States from experimenting and exercising their own judgment in an area to which States lay claim by right of history and expertise, and it does so by regulating an activity beyond the realm of commerce in the ordinary and usual sense of that term. The tendency of this statute to displace state regulation in areas of traditional state concern is evident from its territorial operation. There are over 100,000 elementary and secondary schools in the United States. See U.S. Dept. of Education, National Center for Education Statistics, Digest of Education Statistics 73, 104 (NCES 94-115, 1994) (Tables 63, 94). Each of these now has an invisible federal zone extending 1,000 feet beyond the (often irregular) boundaries of the school property. In some communities no doubt it would be difficult to navigate without infringing on those zones. Yet throughout these areas, school officials would find their own programs for the prohibition of guns in danger of displacement by the federal authority unless the State chooses to enact a

parallel rule.

This is not a case where the etiquette of federalism has been violated by a formal command from the National Government directing the State to enact a certain policy, cf. *New York v. United States*, 505 U.S. 144, 112 S. Ct. 2408, 120 L.Ed.2d 120 (1992), or to organize its governmental functions in a certain way, cf. *FERC v. Mississippi*, 456 U.S., at 781, 102 S.Ct., at 2149 (O'CONNOR, J., concurring in judgment in part and dissenting in part). While the intrusion on state sovereignty may not be as severe in this instance as in some of our recent Tenth Amendment cases, the intrusion is nonetheless significant. Absent a stronger connection or identification with commercial concerns that are central to the Commerce Clause, that interference contradicts the federal balance the Framers designed and that this Court is obliged to enforce.

For these reasons, I join in the opinion and judgment of the Court.

Justice THOMAS, concurring.

The Court today properly concludes that the Commerce Clause does not grant Congress the authority to prohibit gun possession within 1,000 feet of a school, as it attempted to do in the Gun-Free School Zones Act of 1990, Pub.L. 101-647, 104 Stat. 4844. Although I join the majority, I write separately to observe that our case law has drifted far from the original understanding of the Commerce Clause. In a future case, we ought to temper our Commerce Clause jurisprudence in a manner that both makes sense of our more recent case law and is more faithful to the original understanding of that Clause.

We have said that Congress may regulate not only "Commerce ... among the several States," U.S. Const., Art. I, § 8, cl. 3, but also anything that has a "substantial effect" on such commerce. This test, if taken to its logical extreme, would give Congress a "police power" over all aspects of American life. Unfortunately, we have never come to grips with this implication of our substantial effects formula. Although we have supposedly applied the substantial effects test for the past 60 years, we *always* have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power; our cases are quite clear that there are real limits to federal power. See *New York v. United States*, 505 U.S. 144, 155, 112 S.Ct. 2408, 2417, 120 L.Ed.2d 120 (1992) ("[N]o one disputes the proposition that '[t]he Constitution created a Federal Government of limited powers' ") (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 457, 111 S.Ct. 2395, 2399, 115 L.Ed.2d 410 (1991); *Maryland v. Wirtz*, 392 U.S. 183, 196, 88 S.Ct. 2017, 2023-24, 20 L.Ed.2d 1020 (1968); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37, 57 S.Ct. 615, 624, 81 L.Ed. 893 (1937). Cf. *Chisholm v. Georgia*, 2 Dall. 419, 435, 1 L.Ed. 440 (1793) (Iredell, J.) ("Each State in the Union is sovereign as to all the powers reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them") (emphasis deleted). Indeed, on this crucial point, the majority and Justice BREYER agree in principle: The Federal Government has nothing approaching a police power. Compare *ante*, at 1628-1629, with *post*, at 1661-1662.

While the principal dissent concedes that there are limits to federal power, the sweeping nature of our current test enables the dissent to argue that Congress can regulate gun possession. But it seems to me that the power to regulate "commerce" can by no means encompass authority over mere gun possession, any more than it empowers the Federal Government to regulate marriage, littering, or cruelty to animals, throughout the 50 States. Our Constitution quite properly leaves such matters to the individual States, notwithstanding these activities' effects on interstate commerce. Any interpretation of the Commerce Clause that even suggests that Congress could regulate such matters is in need of reexamination.

In an appropriate case, I believe that we must further reconsider our "substantial effects" test with an eye toward constructing a standard that reflects the text and history of the Commerce Clause without totally rejecting our more recent Commerce Clause jurisprudence.

Today, however, I merely support the Court's conclusion with a discussion of the text, structure, and history of the Commerce Clause and an analysis of our early case law. My goal is simply to show how far we have departed from the original understanding and to demonstrate that the result we reach today is by no means "radical," see *post*, at 1651 (STEVENS, J., dissenting). I also want to point out the necessity of refashioning a coherent test that does not tend to "obliterate the distinction between what is national and what is local and create a completely centralized government." *Jones & Laughlin Steel Corp., supra*, at 37, 57 S.Ct., at 624.

I

At the time the original Constitution was ratified, "commerce" consisted of selling, buying, and bartering, as well as transporting for these purposes. See 1 S. Johnson, A Dictionary of the English Language 361 (4th ed. 1773) (defining commerce as "Intercour[s]e; exchange of one thing for another; interchange of any thing; trade; traffick"); N. Bailey, An Universal Etymological English Dictionary (26th ed. 1789) ("trade or traffic"); T. Sheridan, A Complete Dictionary of the English Language (6th ed. 1796) ("Exchange of one thing for another; trade, traffick"). This understanding finds support in the etymology of the word, which literally means "with merchandise." See 3 Oxford English Dictionary 552 (2d ed. 1989) (com--"with"; merci--"merchandise"). In fact, when Federalists and Anti- Federalists discussed the Commerce Clause during the ratification period, they often used trade (in its selling/bartering sense) and commerce interchangeably. See The Federalist No. 4, p. 22 (J. Jay) (asserting that countries will cultivate our friendship when our "trade" is prudently regulated by Federal Government); [FN1] *id.*, No. 7, at 39-40 (A. Hamilton) (discussing "competitions of commerce" between States resulting from state "regulations of trade"); *id.*, No. 40, at 262 (J. Madison) (asserting that it was an "acknowledged object of the Convention ... that the regulation of trade should be submitted to the general government"); Lee, Letters of a Federal Farmer No. 5, in Pamphlets on the Constitution of the United States 319 (P. Ford ed. 1888); Smith, An Address to the People of the State of New York, in *id.*, at 107.

As one would expect, the term "commerce" was used in contradistinction to productive activities such as manufacturing and agriculture. Alexander Hamilton, for example, repeatedly treated commerce, agriculture, and manufacturing as three separate endeavors. See, *e.g.*, The Federalist No. 36, at 224 (referring to "agriculture, commerce, manufactures"); *id.*, No. 21, at 133 (distinguishing commerce, arts, and industry); *id.*, No. 12, at 74 (asserting that commerce and agriculture have shared interests). The same distinctions were made in the state ratification conventions. See, *e.g.*, 2 Debates in the Several State Conventions on the Adoption of the Federal Constitution 57 (J. Elliot ed. 1836) (hereinafter Debates) (T. Dawes at Massachusetts convention); *id.*, at 336 (M. Smith at New York convention).

Moreover, interjecting a modern sense of commerce into the Constitution generates significant textual and structural problems. For example, one cannot replace "commerce" with a different type of enterprise, such as manufacturing. When a manufacturer produces a car, assembly cannot take place "with a foreign nation" or "with the Indian Tribes." Parts may come from different States or other nations and hence may have been in the flow of commerce at one time, but manufacturing takes place at a discrete site. Agriculture and manufacturing involve the production of goods; commerce encompasses traffic in such articles.

The Port Preference Clause also suggests that the term "commerce" denoted sale and/or transport rather than

business generally. According to that Clause, "[n]o Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another." U.S. Const., Art. I, § 9, cl. 6. Although it is possible to conceive of regulations of manufacturing or farming that prefer one port over another, the more natural reading is that the Clause prohibits Congress from using its commerce power to channel commerce through certain favored ports.

The Constitution not only uses the word "commerce" in a narrower sense than our case law might suggest, it also does not support the proposition that Congress has authority over all activities that "substantially affect" interstate commerce. The Commerce Clause [FN2] does not state that Congress may "regulate matters that substantially affect commerce with foreign Nations, and among the several States, and with the Indian Tribes." In contrast, the Constitution itself temporarily prohibited amendments that would "affect" Congress' lack of authority to prohibit or restrict the slave trade or to enact unproportioned direct taxation. Art. V. Clearly, the Framers could have drafted a Constitution that contained a "substantially affects interstate commerce" Clause had that been their objective.

In addition to its powers under the Commerce Clause, Congress has the authority to enact such laws as are "necessary and proper" to carry into execution its power to regulate commerce among the several States. U. S. Const., Art. I, § 8, cl. 18. But on this Court's understanding of congressional power under these two Clauses, many of Congress' other enumerated powers under Art. I, § 8, are wholly superfluous. After all, if Congress may regulate all matters that substantially affect commerce, there is no need for the Constitution to specify that Congress may enact bankruptcy laws, cl. 4, or coin money and fix the standard of weights and measures, cl. 5, or punish counterfeiters of United States coin and securities, cl. 6. Likewise, Congress would not need the separate authority to establish post offices and post roads, cl. 7, or to grant patents and copyrights, cl. 8, or to "punish Piracies and Felonies committed on the high Seas," cl. 10. It might not even need the power to raise and support an Army and Navy, cls. 12 and 13, for fewer people would engage in commercial shipping if they thought that a foreign power could expropriate their property with ease. Indeed, if Congress could regulate matters that substantially affect interstate commerce, there would have been no need to specify that Congress can regulate international trade and commerce with the Indians. As the Framers surely understood, these other branches of trade substantially affect interstate commerce.

Put simply, much if not all of Art. I, § 8 (including portions of the Commerce Clause itself), would be surplusage if Congress had been given authority over matters that substantially affect interstate commerce. An interpretation of cl. 3 that makes the rest of § 8 superfluous simply cannot be correct. Yet this Court's Commerce Clause jurisprudence has endorsed just such an interpretation: The power we have accorded Congress has swallowed Art. I, § 8. [FN3]

Indeed, if a "substantial effects" test can be appended to the Commerce Clause, why not to every other power of the Federal Government? There is no reason for singling out the Commerce Clause for special treatment. Accordingly, Congress could regulate all matters that "substantially affect" the Army and Navy, bankruptcies, tax collection, expenditures, and so on. In that case, the Clauses of § 8 all mutually overlap, something we can assume the Founding Fathers never intended.

Our construction of the scope of congressional authority has the additional problem of coming close to turning the Tenth Amendment on its head. Our case law could be read to reserve to the United States all powers not expressly *prohibited* by the Constitution. Taken together, these fundamental textual problems should, at the very least, convince us that the "substantial effects" test should be reexamined.

II

The exchanges during the ratification campaign reveal the relatively limited reach of the Commerce Clause and of federal power generally. The Founding Fathers confirmed that most areas of life (even many matters that would have substantial effects on commerce) would remain outside the reach of the Federal Government. Such affairs would continue to be under the exclusive control of the States.

Early Americans understood that commerce, manufacturing, and agriculture, while distinct activities, were intimately related and dependent on each other--that each "substantially affected" the others. After all, items produced by farmers and manufacturers were the primary articles of commerce at the time. If commerce was more robust as a result of federal superintendence, farmers and manufacturers could benefit. Thus, Oliver Ellsworth of Connecticut attempted to convince farmers of the benefits of regulating commerce. "Your property and riches depend on a ready demand and generous price for the produce you can annually spare," he wrote, and these conditions exist "where trade flourishes and when the merchant can freely export the produce of the country" to nations that will pay the highest price. A Landholder No. 1, Connecticut Courant, Nov. 5, 1787, in 3 Documentary History of the Ratification of the Constitution 399 (M. Jensen ed. 1978) (hereinafter Documentary History). See also The Federalist No. 35, at 219 (A. Hamilton) ("[D]iscerning citizens are well aware that the mechanic and manufacturing arts furnish the materials of mercantile enterprise and industry. Many of them indeed are immediately connected with the operations of commerce. They know that the merchant is their natural patron and friend"); *id.*, at 221 ("Will not the merchant ... be disposed to cultivate ... the interests of the mechanic and manufacturing arts to which his commerce is so nearly allied?"); A Jerseyman: To the Citizens of New Jersey, Trenton Mercury, Nov. 6, 1787, in 3 Documentary History 147 (noting that agriculture will serve as a "source of commerce"); Marcus, The New Jersey Journal, Nov. 14, 1787, *id.*, at 152 (both the mechanic and the farmer benefit from the prosperity of commerce). William Davie, a delegate to the North Carolina Convention, illustrated the close link best: "Commerce, sir, is the nurse of [agriculture and manufacturing]. The merchant furnishes the planter with such articles as he cannot manufacture himself, and finds him a market for his produce. Agriculture cannot flourish if commerce languishes; they are mutually dependent on each other." 4 Debates 20.

Yet, despite being well aware that agriculture, manufacturing, and other matters substantially affected commerce, the founding generation did not cede authority over all these activities to Congress. Hamilton, for instance, acknowledged that the Federal Government could not regulate agriculture and like concerns:

> "The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things in short which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction." The Federalist No. 17, at 106.

In the unlikely event that the Federal Government would attempt to exercise authority over such matters, its effort "would be as troublesome as it would be nugatory." *Ibid.* [FN4]

The comments of Hamilton and others about federal power reflected the well-known truth that the new Government would have only the limited and enumerated powers found in the Constitution. See, *e.g.*, 2 Debates 267-268 (A. Hamilton at New York Convention) (noting that there would be just cause for rejecting the Constitution if it would enable the Federal Government to "alter, or abrogate ... [a State's] civil and criminal institutions [or] penetrate the recesses of domestic life, and control, in all respects, the private conduct of individuals"); The Federalist No. 45, at 313 (J. Madison); 3 Debates 259 (J. Madison) (Virginia

Convention); R. Sherman & O. Ellsworth, Letter to Governor Huntington, Sept. 26, 1787, in 3 Documentary History 352; J. Wilson, Speech in the State House Yard, Oct. 6, 1787, in 2 *id.*, at 167- 168. Agriculture and manufacture, since they were not surrendered to the Federal Government, were state concerns. See The Federalist No. 34, at 212- 213 (A. Hamilton) (observing that the "internal encouragement of agriculture and manufactures" was an object of *state* expenditure). Even before the passage of the Tenth Amendment, it was apparent that Congress would possess only those powers "herein granted" by the rest of the Constitution. Art. I, § 1.

Where the Constitution was meant to grant federal authority over an activity substantially affecting interstate commerce, the Constitution contains an enumerated power over that particular activity. Indeed, the Framers knew that many of the other enumerated powers in § 8 dealt with matters that substantially affected interstate commerce. Madison, for instance, spoke of the bankruptcy power as being "intimately connected with the regulation of commerce." The Federalist No. 42, at 287. Likewise, Hamilton urged that "[i]f we mean to be a commercial people or even to be secure on our Atlantic side, we must endeavour as soon as possible to have a navy." *Id.*, No. 24, at 157.

In short, the Founding Fathers were well aware of what the principal dissent calls " 'economic ... realities.' " See *post*, at 1662 (BREYER, J.) (quoting *North American Co. v. SEC*, 327 U.S. 686, 705, 66 S.Ct. 785, 796, 90 L.Ed. 945 (1946)). Even though the boundary between commerce and other matters may ignore "economic reality" and thus seem arbitrary or artificial to some, we must nevertheless respect a constitutional line that does not grant Congress power over all that substantially affects interstate commerce.

III

If the principal dissent's understanding of our early case law were correct, there might be some reason to doubt this view of the original understanding of the Constitution. According to that dissent, Chief Justice Marshall's opinion in *Gibbons v. Ogden*, 9 Wheat. 1, 6 L.Ed. 23 (1824), established that Congress may control all local activities that "significantly affect interstate commerce," *post*, at 1657. And, "with the exception of one wrong turn subsequently corrected," this has been the "traditiona[l]" method of interpreting the Commerce Clause. *Post*, at 1665 (citing *Gibbons* and *United States v. Darby*, 312 U.S. 100, 116-117, 61 S.Ct. 451, 458-459, 85 L.Ed. 609 (1941)).

In my view, the dissent is wrong about the holding and reasoning of *Gibbons*. Because this error leads the dissent to characterize the first 150 years of this Court's case law as a "wrong turn," I feel compelled to put the last 50 years in proper perspective.

A

In *Gibbons*, the Court examined whether a federal law that licensed ships to engage in the "coasting trade" preempted a New York law granting a 30-year monopoly to Robert Livingston and Robert Fulton to navigate the State's waterways by steamship. In concluding that it did, the Court noted that Congress could regulate "navigation" because "[a]ll America ... has uniformly understood, the word 'commerce,' to comprehend navigation. It was so understood, and must have been so understood, when the constitution was framed." 9 Wheat., at 190. The Court also observed that federal power over commerce "among the several States" meant that Congress could regulate commerce conducted partly within a State. Because a portion of interstate commerce and foreign commerce would almost always take place within one or more States, federal power over interstate and foreign commerce necessarily would extend into the States. *Id.*, at 194-196.

At the same time, the Court took great pains to make clear that Congress could *not* regulate commerce "which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States." *Id.*, at 194. Moreover, while suggesting that the Constitution might not permit States to regulate interstate or foreign commerce, the Court observed that "[i]nspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State" were but a small part "of that immense mass of legislation ... not surrendered to a general government." *Id.*, at 203. From an early moment, the Court rejected the notion that Congress can regulate everything that affects interstate commerce. That the internal commerce of the States and the numerous state inspection, quarantine, and health laws had substantial effects on interstate commerce cannot be doubted. Nevertheless, they were not "surrendered to the general government."

Of course, the principal dissent is not the first to misconstrue *Gibbons.* For instance, the Court has stated that *Gibbons* "described the federal commerce power with a breadth never yet exceeded." *Wickard v. Filburn*, 317 U.S. 111, 120, 63 S.Ct. 82, 87, 87 L.Ed. 122 (1942). See also *Perez v. United States*, 402 U.S. 146, 151, 91 S.Ct. 1357, 1360, 28 L.Ed.2d 686 (1971) (claiming that with *Darby* and *Wickard*, "the broader view of the Commerce Clause announced by Chief Justice Marshall had been restored"). I believe that this misreading stems from two statements in *Gibbons.*

First, the Court made the uncontroversial claim that federal power does not encompass "*commerce* " that "does not extend to or affect other States." 9 Wheat., at 194 (emphasis added). From this statement, the principal dissent infers that whenever an activity affects interstate commerce, it necessarily follows that Congress can regulate such activities. Of course, Chief Justice Marshall said no such thing and the inference the dissent makes cannot be drawn.

There is a much better interpretation of the "affect[s]" language: Because the Court had earlier noted that the commerce power did not extend to wholly intrastate commerce, the Court was acknowledging that although the line between intrastate and interstate/foreign commerce would be difficult to draw, federal authority could not be construed to cover purely intrastate commerce. Commerce that did not affect another State could *never* be said to be commerce "among the several States."

But even if one were to adopt the dissent's reading, the "affect[s]" language, at most, permits Congress to regulate only intrastate *commerce* that substantially affects interstate and foreign commerce. There is no reason to believe that Chief Justice Marshall was asserting that Congress could regulate *all* activities that affect interstate commerce. See *ibid.*

The second source of confusion stems from the Court's praise for the Constitution's division of power between the States and the Federal Government:

> "The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government." *Id.*, at 195.

In this passage, the Court merely was making the well understood point that the Constitution commits matters

of "national" concern to Congress and leaves "local" matters to the States. The Court was *not* saying that whatever Congress believes is a national matter becomes an object of federal control. The matters of national concern are enumerated in the Constitution: war, taxes, patents, and copyrights, uniform rules of naturalization and bankruptcy, types of commerce, and so on. See generally Art. I, § 8. *Gibbons'* emphatic statements that Congress could not regulate many matters that affect commerce confirm that the Court did not read the Commerce Clause as granting Congress control over matters that "affect the States generally." [FN5] *Gibbons* simply cannot be construed as the principal dissent would have it.

B

I am aware of no cases prior to the New Deal that characterized the power flowing from the Commerce Clause as sweepingly as does our substantial effects test. My review of the case law indicates that the substantial effects test is but an innovation of the 20th century.

Even before *Gibbons*, Chief Justice Marshall, writing for the Court in *Cohens v. Virginia*, 6 Wheat. 264, 5 L. Ed. 257 (1821), noted that Congress had "no general right to punish murder committed within any of the States," *id.*, at 426, and that it was "clear that congress cannot punish felonies generally," *id.*, at 428. The Court's only qualification was that Congress could enact such laws for places where it enjoyed plenary powers--for instance, over the District of Columbia. *Id.*, at 426. Thus, whatever effect ordinary murders, or robbery, or gun possession might have on interstate commerce (or on any other subject of federal concern) was irrelevant to the question of congressional power. [FN6]
Likewise, there were no laws in the early Congresses that regulated manufacturing and agriculture. Nor was there *any* statute that purported to regulate activities with "substantial effects" on interstate commerce.

United States v. Dewitt, 9 Wall. 41, 19 L.Ed. 593 (1870), marked the first time the Court struck down a federal law as exceeding the power conveyed by the Commerce Clause. In a two-page opinion, the Court invalidated a nationwide law prohibiting all sales of naphtha and illuminating oils. In so doing, the Court remarked that the Commerce Clause "has always been understood as limited by its terms; and as a virtual denial of any power to interfere with the internal trade and business of the separate States." *Id.*, at 44. The law in question was "plainly a regulation of police," which could have constitutional application only where Congress had exclusive authority, such as the territories. *Id.*, at 44-45. See also *License Tax Cases*, 5 Wall. 462, 470-471, 18 L.Ed. 497 (1867) (Congress cannot interfere with the internal commerce and business of a State); *Trade-Mark Cases*, 100 U.S. 82, 25 L.Ed. 550 (1879) (Congress cannot regulate internal commerce and thus may not establish national trademark registration).

In *United States v. E.C. Knight Co.*, 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325 (1895), this Court held that mere attempts to monopolize the manufacture of sugar could not be regulated pursuant to the Commerce Clause. Raising echoes of the discussions of the Framers regarding the intimate relationship between commerce and manufacturing, the Court declared that "[c]ommerce succeeds to manufacture, and is not a part of it." *Id.*, at 12, 15 S.Ct., at 253. The Court also approvingly quoted from *Kidd v. Pearson*, 128 U.S. 1, 20, 9 S.Ct. 6, 9-10, 32 L.Ed. 346 (1888): " 'No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufacture and commerce.... If it be held that the term [commerce] includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested ... with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining--in short, every branch of human industry.' " *E.C. Knight, supra*, 156 U.S., at 14, 15 S.Ct., at 254.

If federal power extended to these types of production "comparatively little of business operations and affairs would be left for state control." *Id.*, at 16, 15 S.Ct., at 255. See also *Newberry v. United States*, 256 U.S. 232, 257, 41 S.Ct. 469, 474, 65 L.Ed. 913 (1921) ("It is settled ... that the power to regulate interstate and foreign commerce does not reach whatever is essential thereto. Without agriculture, manufacturing, mining, etc., commerce could not exist, but this fact does not suffice to subject them to the control of Congress"). Whether or not manufacturing, agriculture, or other matters substantially affected interstate commerce was irrelevant.

As recently as 1936, the Court continued to insist that the Commerce Clause did not reach the wholly internal business of the States. See *Carter v. Carter Coal Co.*, 298 U.S. 238, 308, 56 S.Ct. 855, 871-872, 80 L.Ed. 1160 (1936) (Congress may not regulate mine labor because "[t]he relation of employer and employee is a local relation"); see also *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 543-550, 55 S.Ct. 837, 848-852, 79 L.Ed. 1570 (1935) (holding that Congress may not regulate intrastate sales of sick chickens or the labor of employees involved in intrastate poultry sales). The Federal Government simply could not reach such subjects regardless of their effects on interstate commerce.

These cases all establish a simple point: From the time of the ratification of the Constitution to the mid-1930's, it was widely understood that the Constitution granted Congress only limited powers, notwithstanding the Commerce Clause. [FN7] Moreover, there was no question that activities wholly separated from business, such as gun possession, were beyond the reach of the commerce power. If anything, the "wrong turn" was the Court's dramatic departure in the 1930's from a century and a half of precedent.

IV

Apart from its recent vintage and its corresponding lack of any grounding in the original understanding of the Constitution, the substantial effects test suffers from the further flaw that it appears to grant Congress a police power over the Nation. When asked at oral argument if there were *any* limits to the Commerce Clause, the Government was at a loss for words. Tr. of Oral Arg. 5. Likewise, the principal dissent insists that there are limits, but it cannot muster even one example. *Post*, at 1661-1662. Indeed, the dissent implicitly concedes that its reading has no limits when it criticizes the Court for "threaten[ing] legal uncertainty in an area of law that ... seemed reasonably well settled." *Post*, at 1664-1665. The one advantage of the dissent's standard is certainty: It is certain that under its analysis everything may be regulated under the guise of the Commerce Clause.

The substantial effects test suffers from this flaw, in part, because of its "aggregation principle." Under so-called "class of activities" statutes, Congress can regulate whole categories of activities that are not themselves either "interstate" or "commerce." In applying the effects test, we ask whether the class of activities *as a whole* substantially affects interstate commerce, not whether any specific activity within the class has such effects when considered in isolation. See *Maryland v. Wirtz*, 392 U.S., at 192-193, 88 S.Ct., at 2021-2022 (if class of activities is " 'within the reach of federal power,' " courts may not excise individual applications as trivial) (quoting *Darby*, 312 U.S., at 120-121, 61 S.Ct., at 460-461).

The aggregation principle is clever, but has no stopping point. Suppose all would agree that gun possession within 1,000 feet of a school does not substantially affect commerce, but that possession of weapons generally (knives, brass knuckles, nunchakus, etc.) does. Under our substantial effects doctrine, even though Congress cannot single out gun possession, it can prohibit weapon possession generally. But one *always* can

draw the circle broadly enough to cover an activity that, when taken in isolation, would not have substantial effects on commerce. Under our jurisprudence, if Congress passed an omnibus "substantially affects interstate commerce" statute, purporting to regulate every aspect of human existence, the Act apparently would be constitutional. Even though particular sections may govern only trivial activities, the statute in the aggregate regulates matters that substantially affect commerce.

V

This extended discussion of the original understanding and our first century and a half of case law does not necessarily require a wholesale abandonment of our more recent opinions. [FN8] It simply reveals that our substantial effects test is far removed from both the Constitution and from our early case law and that the Court's opinion should not be viewed as "radical" or another "wrong turn" that must be corrected in the future. [FN9] The analysis also suggests that we ought to temper our Commerce Clause jurisprudence.

Unless the dissenting Justices are willing to repudiate our long-held understanding of the limited nature of federal power, I would think that they, too, must be willing to reconsider the substantial effects test in a future case. If we wish to be true to a Constitution that does not cede a police power to the Federal Government, our Commerce Clause's boundaries simply cannot be "defined" as being " 'commensurate with the national needs' " or self-consciously intended to let the Federal Government " 'defend itself against economic forces that Congress decrees inimical or destructive of the national economy.' " See *post*, at 1662 (BREYER, J., dissenting) (quoting *North American Co. v. SEC*, 327 U.S., at 705, 66 S.Ct., at 796). Such a formulation of federal power is no test at all: It is a blank check.

At an appropriate juncture, I think we must modify our Commerce Clause jurisprudence. Today, it is easy enough to say that the Clause certainly does not empower Congress to ban gun possession within 1,000 feet of a school.

Justice STEVENS, dissenting.

The welfare of our future "Commerce with foreign Nations, and among the several States," U.S. Const., Art. I, § 8, cl. 3, is vitally dependent on the character of the education of our children. I therefore agree entirely with Justice BREYER's explanation of why Congress has ample power to prohibit the possession of firearms in or near schools--just as it may protect the school environment from harms posed by controlled substances such as asbestos or alcohol. I also agree with Justice SOUTER's exposition of the radical character of the Court's holding and its kinship with the discredited, pre- Depression version of substantive due process. Cf. *Dolan v. City of Tigard*, 512 U.S. 374, 405-411, 114 S.Ct. 2309, 2326-2330, 129 L.Ed.2d 304 (1994) (STEVENS, J., dissenting). I believe, however, that the Court's extraordinary decision merits this additional comment.

Guns are both articles of commerce and articles that can be used to restrain commerce. Their possession is the consequence, either directly or indirectly, of commercial activity. In my judgment, Congress' power to regulate commerce in firearms includes the power to prohibit possession of guns at any location because of their potentially harmful use; it necessarily follows that Congress may also prohibit their possession in particular markets. The market for the possession of handguns by school-age children is, distressingly, substantial. [FN*] Whether or not the national interest in eliminating that market would have justified federal legislation in 1789, it surely does today.

Justice SOUTER, dissenting.

In reviewing congressional legislation under the Commerce Clause, we defer to what is often a merely implicit congressional judgment that its regulation addresses a subject substantially affecting interstate commerce "if there is any rational basis for such a finding." *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U.S. 264, 276, 101 S.Ct. 2352, 2360, 69 L.Ed.2d 1 (1981); *Preseault v. ICC,* 494 U.S. 1, 17, 110 S.Ct. 914, 924-925, 108 L.Ed.2d 1 (1990); see *Maryland v. Wirtz,* 392 U.S. 183, 190, 88 S.Ct. 2017, 2020-2021, 20 L.Ed.2d 1020 (1968), quoting *Katzenbach v. McClung,* 379 U.S. 294, 303-304, 85 S.Ct. 377, 383-384, 13 L.Ed.2d 290 (1964). If that congressional determination is within the realm of reason, "the only remaining question for judicial inquiry is whether 'the means chosen by Congress [are] reasonably adapted to the end permitted by the Constitution.' " *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., supra,* at 276, 101 S.Ct., at 2360, quoting *Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 262, 85 S.Ct. 348, 360, 13 L.Ed.2d 258 (1964); see also *Preseault v. ICC, supra,* 494 U. S., at 17, 110 S.Ct., at 924-925. [FN1]

The practice of deferring to rationally based legislative judgments "is a paradigm of judicial restraint." *FCC v. Beach Communications, Inc.,* 508 U.S. 307, 314, 113 S.Ct. 2096, 2101, 124 L.Ed.2d 211 (1993). In judicial review under the Commerce Clause, it reflects our respect for the institutional competence of the Congress on a subject expressly assigned to it by the Constitution and our appreciation of the legitimacy that comes from Congress's political accountability in dealing with matters open to a wide range of possible choices. See *id.,* at 313-316, 113 S.Ct., at 2101-2102; *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., supra,* 452 U.S., at 276, 101 S.Ct., at 2360; *United States v. Carolene Products Co.,* 304 U.S. 144, 147, 151-154, 58 S.Ct. 778, 783-784, 82 L.Ed. 1234 (1938); cf. *Williamson v. Lee Optical of Okla., Inc.,* 348 U.S. 483, 488, 75 S.Ct. 461, 464, 99 L.Ed. 563 (1955).

It was not ever thus, however, as even a brief overview of Commerce Clause history during the past century reminds us. The modern respect for the competence and primacy of Congress in matters affecting commerce developed only after one of this Court's most chastening experiences, when it perforce repudiated an earlier and untenably expansive conception of judicial review in derogation of congressional commerce power. A look at history's sequence will serve to show how today's decision tugs the Court off course, leading it to suggest opportunities for further developments that would be at odds with the rule of restraint to which the Court still wisely states adherence.

I

Notwithstanding the Court's recognition of a broad commerce power in *Gibbons v. Ogden,* 9 Wheat. 1, 196-197, 6 L.Ed. 23 (1824) (Marshall, C.J.), Congress saw few occasions to exercise that power prior to Reconstruction, see generally 2 C. Warren, The Supreme Court in United States History 729-739 (rev. ed. 1935), and it was really the passage of the Interstate Commerce Act of 1887 that opened a new age of congressional reliance on the Commerce Clause for authority to exercise general police powers at the national level, see *id.,* at 729-730. Although the Court upheld a fair amount of the ensuing legislation as being within the commerce power, see, *e.g., Stafford v. Wallace,* 258 U.S. 495, 42 S.Ct. 397, 66 L.Ed. 735 (1922) (upholding an Act regulating trade practices in the meat packing industry); *Shreveport Rate Cases,* 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914) (upholding Interstate Commerce Commission order to equalize interstate and intrastate rail rates); see generally Warren, *supra,* at 729-739, the period from the turn of the century to 1937 is better noted for a series of cases applying highly formalistic notions of "commerce" to invalidate federal social and economic legislation, see, *e.g., Carter v. Carter Coal Co.,* 298 U.S. 238, 303-

304, 56 S.Ct. 855, 869-870, 80 L.Ed. 1160 (1936) (striking Act prohibiting unfair labor practices in coal industry as regulation of "mining" and "production," not "commerce"); *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 545-548, 55 S.Ct. 837, 849-851, 79 L.Ed. 1570 (1935) (striking congressional regulation of activities affecting interstate commerce only "indirectly"); *Hammer v. Dagenhart,* 247 U.S. 251, 38 S.Ct. 529, 62 L.Ed. 1101 (1918) (striking Act prohibiting shipment in interstate commerce of goods manufactured at factories using child labor because the Act regulated "manufacturing," not "commerce"); *Adair v. United States,* 208 U.S. 161, 28 S.Ct. 277, 52 L.Ed. 436 (1908) (striking protection of labor union membership as outside "commerce").

These restrictive views of commerce subject to congressional power complemented the Court's activism in limiting the enforceable scope of state economic regulation. It is most familiar history that during this same period the Court routinely invalidated state social and economic legislation under an expansive conception of Fourteenth Amendment substantive due process. See, *e.g., Louis K. Liggett Co. v. Baldridge,* 278 U.S. 105, 49 S.Ct. 57, 73 L.Ed. 204 (1928) (striking state law requiring pharmacy owners to be licensed as pharmacists); *Coppage v. Kansas,* 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441 (1915) (striking state law prohibiting employers from requiring their employees to agree not to join labor organizations); *Lochner v. New York,* 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905) (striking state law establishing maximum working hours for bakers). See generally L. Tribe, American Constitutional Law 568-574 (2d ed. 1988). The fulcrums of judicial review in these cases were the notions of liberty and property characteristic of laissez-faire economics, whereas the Commerce Clause cases turned on what was ostensibly a structural limit of federal power, but under each conception of judicial review the Court's character for the first third of the century showed itself in exacting judicial scrutiny of a legislature's choice of economic ends and of the legislative means selected to reach them.

It was not merely coincidental, then, that sea changes in the Court's conceptions of its authority under the Due Process and Commerce Clauses occurred virtually together, in 1937, with *West Coast Hotel Co. v. Parrish,* 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703, and *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893. See Stern, The Commerce Clause and the National Economy, 1933-1946, 59 Harv.L. Rev. 645, 674-682 (1946). In *West Coast Hotel,* the Court's rejection of a due process challenge to a state law fixing minimum wages for women and children marked the abandonment of its expansive protection of contractual freedom. Two weeks later, *Jones & Laughlin* affirmed congressional commerce power to authorize NLRB injunctions against unfair labor practices. The Court's finding that the regulated activity had a direct enough effect on commerce has since been seen as beginning the abandonment, for practical purposes, of the formalistic distinction between direct and indirect effects.

In the years following these decisions, deference to legislative policy judgments on commercial regulation became the powerful theme under both the Due Process and Commerce Clauses, see *United States v. Carolene Products Co.,* 304 U.S., at 147-148, 152, 58 S.Ct., at 780-781, 783; *United States v. Darby,* 312 U. S. 100, 119-121, 61 S.Ct. 451, 459-460, 85 L.Ed. 609 (1941); *United States v. Wrightwood Dairy Co.,* 315 U. S. 110, 118-119, 62 S.Ct. 523, 525-526, 86 L.Ed. 726 (1942), and in due course that deference became articulate in the standard of rationality review. In due process litigation, the Court's statement of a rational basis test came quickly. See *United States v. Carolene Products Co., supra,* 304 U.S., at 152, 58 S.Ct., at 783; see also *Williamson v. Lee Optical Co., supra,* 348 U.S., at 489- 490, 75 S.Ct., at 465-466. The parallel formulation of the Commerce Clause test came later, only because complete elimination of the direct/indirect effects dichotomy and acceptance of the cumulative effects doctrine, *Wickard v. Filburn,* 317 U.S. 111, 125, 127-129, 63 S.Ct. 82, 89, 90-91, 87 L.Ed. 122 (1942); *United States v. Wrightwood Dairy Co., supra,* 315 U. S., at 124-126, 62 S.Ct., at 528-529, so far settled the pressing issues of congressional power over commerce as to leave the Court for years without any need to phrase a test explicitly deferring to rational legislative

judgments. The moment came, however, with the challenge to congressional Commerce Clause authority to prohibit racial discrimination in places of public accommodation, when the Court simply made explicit what the earlier cases had implied: "where we find that the legislators, in light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end." *Katzenbach v. McClung,* 379 U.S., at 303-304, 85 S.Ct., at 383-384, discussing *United States v. Darby, supra;* see *Heart of Atlanta Motel, Inc. v. United States,* 379 U.S., at 258-259, 85 S.Ct., at 358-359. Thus, under commerce, as under due process, adoption of rational basis review expressed the recognition that the Court had no sustainable basis for subjecting economic regulation as such to judicial policy judgments, and for the past half century the Court has no more turned back in the direction of formalistic Commerce Clause review (as in deciding whether regulation of commerce was sufficiently direct) than it has inclined toward reasserting the substantive authority of *Lochner* due process (as in the inflated protection of contractual autonomy). See, *e.g., Maryland v. Wirtz,* 392 U.S., at 190, 198, 88 S.Ct., at 2020-2021, 2024- 2025; *Perez v. United States,* 402 U.S. 146, 151-157, 91 S.Ct. 1357, 1360- 1363, 28 L. Ed.2d 686 (1971); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U.S., at 276, 277, 101 S. Ct., at 2360, 2360-2361.

II

There is today, however, a backward glance at both the old pitfalls, as the Court treats deference under the rationality rule as subject to gradation according to the commercial or noncommercial nature of the immediate subject of the challenged regulation. See *ante,* at 1630-1631. The distinction between what is patently commercial and what is not looks much like the old distinction between what directly affects commerce and what touches it only indirectly. And the act of calibrating the level of deference by drawing a line between what is patently commercial and what is less purely so will probably resemble the process of deciding how much interference with contractual freedom was fatal. Thus, it seems fair to ask whether the step taken by the Court today does anything but portend a return to the untenable jurisprudence from which the Court extricated itself almost 60 years ago. The answer is not reassuring. To be sure, the occasion for today's decision reflects the century's end, not its beginning. But if it seems anomalous that the Congress of the United States has taken to regulating school yards, the Act in question is still probably no more remarkable than state regulation of bake shops 90 years ago. In any event, there is no reason to hope that the Court's qualification of rational basis review will be any more successful than the efforts at substantive economic review made by our predecessors as the century began. Taking the Court's opinion on its own terms, Justice BREYER has explained both the hopeless porosity of "commercial" character as a ground of Commerce Clause distinction in America's highly connected economy, and the inconsistency of this categorization with our rational basis precedents from the last 50 years.

Further glosses on rationality review, moreover, may be in the offing. Although this case turns on commercial character, the Court gestures toward two other considerations that it might sometime entertain in applying rational basis scrutiny (apart from a statutory obligation to supply independent proof of a jurisdictional element): does the congressional statute deal with subjects of traditional state regulation, and does the statute contain explicit factual findings supporting the otherwise implicit determination that the regulated activity substantially affects interstate commerce? Once again, any appeal these considerations may have depends on ignoring the painful lesson learned in 1937, for neither of the Court's suggestions would square with rational basis scrutiny.

A

The Court observes that the Gun-Free School Zones Act operates in two areas traditionally subject to legislation by the States, education and enforcement of criminal law. The suggestion is either that a connection between commerce and these subjects is remote, or that the commerce power is simply weaker when it touches subjects on which the States have historically been the primary legislators. Neither suggestion is tenable. As for remoteness, it may or may not be wise for the National Government to deal with education, but Justice BREYER has surely demonstrated that the commercial prospects of an illiterate State or Nation are not rosy, and no argument should be needed to show that hijacking interstate shipments of cigarettes can affect commerce substantially, even though the States have traditionally prosecuted robbery. And as for the notion that the commerce power diminishes the closer it gets to customary state concerns, that idea has been flatly rejected, and not long ago. The commerce power, we have often observed, is plenary. *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., supra,* at 276, 101 S.Ct., at 2360; *United States v. Darby,* 312 U.S. at 114, 61 S.Ct., at 457; see *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U. S. 528, 549-550, 105 S.Ct. 1005, 1016-1017, 83 L.Ed.2d 1016 (1985); *Gibbons v. Ogden,* 9 Wheat., at 196-197. Justice Harlan put it this way in speaking for the Court in *Maryland v. Wirtz:*

> "There is no general doctrine implied in the Federal Constitution that the two governments, national and state, are each to exercise its powers so as not to interfere with the free and full exercise of the powers of the other.... [I]t is clear that the Federal Government, when acting within a delegated power, may override countervailing state interests.... As long ago as [1925], the Court put to rest the contention that state concerns might constitutionally 'outweigh' the importance of an otherwise valid federal statute regulating commerce." 392 U.S., at 195-196, 88 S.Ct., at 2023-2024 (citations and internal quotation marks omitted).

See also *United States v. Darby, supra,* 312 U.S., at 114, 61 S.Ct., at 457; *Gregory v. Ashcroft,* 501 U.S. 452, 460, 111 S.Ct. 2395, 2400-2401, 115 L.Ed.2d 410 (1991); *United States v. Carolene Products Co.,* 304 U.S., at 147, 58 S.Ct., at 781.

Nor is there any contrary authority in the reasoning of our cases imposing clear statement rules in some instances of legislation that would significantly alter the state-national balance. In the absence of a clear statement of congressional design, for example, we have refused to interpret ambiguous federal statutes to limit fundamental state legislative prerogatives, *Gregory v. Ashcroft, supra,* 501 U.S., at 460-464, 111 S.Ct., at 2400-2403, our understanding being that such prerogatives, through which "a State defines itself as a sovereign," are "powers with which Congress does not readily interfere," 501 U.S., at 460, 461, 111 S.Ct., at 2400-2401, 2401. Likewise, when faced with two plausible interpretations of a federal criminal statute, we generally will take the alternative that does not force us to impute an intention to Congress to use its full commerce power to regulate conduct traditionally and ably regulated by the States. See *United States v. Enmons,* 410 U.S. 396, 411-412, 93 S.Ct. 1007, 1015-1016, 35 L.Ed.2d 379 (1973); *United States v. Bass,* 404 U.S. 336, 349-350, 92 S.Ct. 515, 523- 524, 30 L.Ed.2d 488 (1971); *Rewis v. United States,* 401 U.S. 808, 812, 91 S.Ct. 1056, 1059-1060, 28 L.Ed.2d 493 (1971).

These clear statement rules, however, are merely rules of statutory interpretation, to be relied upon only when the terms of a statute allow, *United States v. Culbert,* 435 U.S. 371, 379-380, 98 S.Ct. 1112, 1116- 1117, 55 L. Ed.2d 349 (1978); see *Gregory v. Ashcroft, supra,* 501 U.S., at 470, 111 S.Ct., at 2406; *United States v. Bass, supra,* 404 U.S., at 346- 347, 92 S.Ct., at 521-522, and in cases implicating Congress's historical reluctance to trench on state legislative prerogatives or to enter into spheres already occupied by the States, *Gregory v. Ashcroft, supra,* 501 U.S., at 461, 111 S.Ct., at 2401; *United States v. Bass, supra,* 404 U.S., at 349, 92 S.Ct., at 523; see *Rewis v. United States, supra,* 401 U.S., at 811-812, 91 S.Ct., at 1059-1060. They

are rules for determining intent when legislation leaves intent subject to question. But our hesitance to presume that Congress has acted to alter the state-federal status quo (when presented with a plausible alternative) has no relevance whatever to the enquiry whether it has the commerce power to do so or to the standard of judicial review when Congress has definitely meant to exercise that power. Indeed, to allow our hesitance to affect the standard of review would inevitably degenerate into the sort of substantive policy review that the Court found indefensible 60 years ago. The Court does not assert (and could not plausibly maintain) that the commerce power is wholly devoid of congressional authority to speak on any subject of traditional state concern; but if congressional action is not forbidden absolutely when it touches such a subject, it will stand or fall depending on the Court's view of the strength of the legislation's commercial justification. And here once again history raises its objections that the Court's previous essays in overriding congressional policy choices under the Commerce Clause were ultimately seen to suffer two fatal weaknesses: when dealing with Acts of Congress (as distinct from state legislation subject to review under the theory of dormant commerce power) nothing in the Clause compelled the judicial activism, and nothing about the judiciary as an institution made it a superior source of policy on the subject Congress dealt with. There is no reason to expect the lesson would be different another time.

B

There remain questions about legislative findings. The Court of Appeals expressed the view, 2 F.3d 1342, 1363-1368 (CA 5 1993), that the result in this case might well have been different if Congress had made explicit findings that guns in schools have a substantial effect on interstate commerce, and the Court today does not repudiate that position, see *ante,* at 1631-1632. Might a court aided by such findings have subjected this legislation to less exacting scrutiny (or, put another way, should a court have deferred to such findings if Congress had made them)? [FN2] The answer to either question must be no, although as a general matter findings are important and to be hoped for in the difficult cases.

It is only natural to look for help with a hard job, and reviewing a claim that Congress has exceeded the commerce power is much harder in some cases than in others. A challenge to congressional regulation of interstate garbage hauling would be easy to resolve; review of congressional regulation of gun possession in school yards is more difficult, both because the link to interstate commerce is less obvious and because of our initial ignorance of the relevant facts. In a case comparable to this one, we may have to dig hard to make a responsible judgment about what Congress could reasonably find, because the case may be close, and because judges tend not to be familiar with the facts that may or may not make it close. But while the ease of review may vary from case to case, it does not follow that the standard of review should vary, much less that explicit findings of fact would even directly address the standard.

The question for the courts, as all agree, is not whether as a predicate to legislation Congress in fact found that a particular activity substantially affects interstate commerce. The legislation implies such a finding, and there is no reason to entertain claims that Congress acted ultra vires intentionally. Nor is the question whether Congress was correct in so finding. The only question is whether the legislative judgment is within the realm of reason. See *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S., at 276-277, 101 S.Ct., at 2360-2361; *Katzenbach v. McClung,* 379 U.S., at 303-304, 85 S.Ct., at 383-384; *Railroad Retirement Bd. v. Alton R. Co.*, 295 U.S. 330, 391-392, 55 S.Ct. 758, 780, 79 L.Ed. 1468 (1935) (Hughes, C. J., dissenting); cf. *FCC v. Beach Communications, Inc.*, 508 U.S., at 315, 113 S.Ct., at 2102 (in the equal protection context, "those attacking the rationality of the legislative classification have the burden to negate every conceivable basis which might support it[;] ... it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature") (citations and internal quotation marks omitted); *Ferguson v. Skrupa,* 372 U.S. 726, 731- 733, 83 S.Ct. 1028, 1031-1032,

10 L.Ed.2d 93 (1963); *Williamson v. Lee Optical Co.*, 348 U.S., at 487, 75 S.Ct., at 464. Congressional findings do not, however, directly address the question of reasonableness; they tell us what Congress actually has found, not what it could rationally find. If, indeed, the Court were to make the existence of explicit congressional findings dispositive in some close or difficult cases something other than rationality review would be afoot. The resulting congressional obligation to justify its policy choices on the merits would imply either a judicial authority to review the justification (and, hence, the wisdom) of those choices, or authority to require Congress to act with some high degree of deliberateness, of which express findings would be evidence. But review for congressional wisdom would just be the old judicial pretension discredited and abandoned in 1937, and review for deliberateness would be as patently unconstitutional as an Act of Congress mandating long opinions from this Court. Such a legislative process requirement would function merely as an excuse for covert review of the merits of legislation under standards never expressed and more or less arbitrarily applied. Under such a regime, in any case, the rationality standard of review would be a thing of the past.

On the other hand, to say that courts applying the rationality standard may not defer to findings is not, of course, to say that findings are pointless. They may, in fact, have great value in telling courts what to look for, in establishing at least one frame of reference for review, and in citing to factual authority. The research underlying Justice BREYER's dissent was necessarily a major undertaking; help is welcome, and it not incidentally shrinks the risk that judicial research will miss material scattered across the public domain or buried under pounds of legislative record. Congressional findings on a more particular plane than this record illustrates would accordingly have earned judicial thanks. But thanks do not carry the day as long as rational possibility is the touchstone, and I would not allow for the possibility, as the Court's opinion may, *ante*, at 1632, that the addition of congressional findings could in principle have affected the fate of the statute here.

III

Because Justice BREYER's opinion demonstrates beyond any doubt that the Act in question passes the rationality review that the Court continues to espouse, today's decision may be seen as only a misstep, its reasoning and its suggestions not quite in gear with the prevailing standard, but hardly an epochal case. I would not argue otherwise, but I would raise a caveat. Not every epochal case has come in epochal trappings. *Jones & Laughlin* did not reject the direct-indirect standard in so many words; it just said the relation of the regulated subject matter to commerce was direct enough. 301 U.S., at 41-43, 57 S.Ct., at 626-627. But we know what happened.

I respectfully dissent.

Justice BREYER, with whom Justice STEVENS, Justice SOUTER, and Justice GINSBURG join, dissenting.

The issue in this case is whether the Commerce Clause authorizes Congress to enact a statute that makes it a crime to possess a gun in, or near, a school. 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V). In my view, the statute falls well within the scope of the commerce power as this Court has understood that power over the last half century.

I

In reaching this conclusion, I apply three basic principles of Commerce Clause interpretation. First, the

power to "regulate Commerce ... among the several States," U.S. Const., Art. I, § 8, cl. 3, encompasses the power to regulate local activities insofar as they significantly affect interstate commerce. See, *e.g., Gibbons v. Ogden,* 9 Wheat. 1, 194-195, 6 L.Ed. 23 (1824) (Marshall, C.J.); *Wickard v. Filburn,* 317 U.S. 111, 125, 63 S. Ct. 82, 89, 87 L.Ed. 122 (1942). As the majority points out, *ante,* at 1630, the Court, in describing how much of an effect the Clause requires, sometimes has used the word "substantial" and sometimes has not. Compare, *e.g., Wickard, supra,* at 125, 63 S.Ct., at 89 ("substantial economic effect"), with *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U.S. 264, 276, 101 S.Ct. 2352, 2360, 69 L.Ed.2d 1 (1981) ("affects interstate commerce"); see also *Maryland v. Wirtz,* 392 U.S. 183, 196, n. 27, 88 S.Ct. 2017, 2024 n. 27, 20 L.Ed.2d 1020 (1968) (cumulative effect must not be "trivial"); *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 37, 57 S.Ct. 615, 624, 81 L.Ed. 893 (1937) speaking of "close and substantial *relation* " between activity and commerce, not of "substantial effect") (emphasis added); *Gibbons, supra,* at 194 (words of Commerce Clause do not "comprehend ... commerce, which is completely internal ... and which does not ... affect other States"). And, as the majority also recognizes in quoting Justice Cardozo, the question of degree (how *much* effect) requires an estimate of the "size" of the effect that no verbal formulation can capture with precision. See *ante,* at 1633. I use the word "significant" because the word "substantial" implies a somewhat narrower power than recent precedent suggests. See, *e.g., Perez v. United States,* 402 U.S. 146, 154, 91 S.Ct. 1357, 1361-1362, 28 L.Ed.2d 686 (1971); *Daniel v. Paul,* 395 U.S. 298, 308, 89 S.Ct. 1697, 1702-1703, 23 L.Ed.2d 318 (1969). But to speak of "substantial effect" rather than "significant effect" would make no difference in this case.

Second, in determining whether a local activity will likely have a significant effect upon interstate commerce, a court must consider, not the effect of an individual act (a single instance of gun possession), but rather the cumulative effect of all similar instances (*i.e.,* the effect of all guns possessed in or near schools). See, *e.g., Wickard, supra,* 317 U.S., at 127-128, 63 S.Ct., at 89-90. As this Court put the matter almost 50 years ago:

> "[I]t is enough that the individual activity when multiplied into a general practice ... contains a threat to the interstate economy that requires preventative regulation." *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.,* 334 U.S. 219, 236, 68 S.Ct. 996, 1006, 92 L.Ed. 1328 (1948) (citations omitted).

Third, the Constitution requires us to judge the connection between a regulated activity and interstate commerce, not directly, but at one remove. Courts must give Congress a degree of leeway in determining the existence of a significant factual connection between the regulated activity and interstate commerce--both because the Constitution delegates the commerce power directly to Congress and because the determination requires an empirical judgment of a kind that a legislature is more likely than a court to make with accuracy. The traditional words "rational basis" capture this leeway. See *Hodel, supra,* 452 U.S., at 276-277, 101 S. Ct., at 2360-2361. Thus, the specific question before us, as the Court recognizes, is not whether the "regulated activity sufficiently affected interstate commerce," but, rather, whether Congress could have had "*a rational basis*" for so concluding. *Ante,* at 1629 (emphasis added).

I recognize that we must judge this matter independently. "[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so." *Hodel, supra,* at 311, 101 S.Ct., at 2391 (REHNQUIST, J., concurring in judgment). And, I also recognize that Congress did not write specific "interstate commerce" findings into the law under which Lopez was convicted. Nonetheless, as I have already noted, the matter that we review independently (*i.e.,* whether there is a "rational basis") already has considerable leeway built into it. And, the absence of findings, at most, deprives a statute of the benefit of some *extra* leeway. This extra deference, in principle, might change the

result in a close case, though, in practice, it has not made a critical legal difference. See, *e.g., Katzenbach v. McClung,* 379 U.S. 294, 299, 85 S.Ct. 377, 299-300, 13 L.Ed.2d 290 (1964) (noting that "no formal findings were made, which of course are not necessary"); *Perez, supra,* 402 U.S., at 156-157, 91 S.Ct., at 1362-1363; cf. *Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622, 666, 114 S.Ct. 2445, 2471, 129 L.Ed.2d 497 (1994) (opinion of KENNEDY, J.) ("Congress is not obligated, when enacting its statutes, to make a record of the type that an administrative agency or court does to accommodate judicial review"); *Fullilove v. Klutznick,* 448 U.S. 448, 503, 100 S.Ct. 2758, 2787, 65 L.Ed.2d 902 (1980) (Powell, J., concurring) ("After Congress has legislated repeatedly in an area of national concern, its Members gain experience that may reduce the need for fresh hearings or prolonged debate ..."). It would seem particularly unfortunate to make the validity of the statute at hand turn on the presence or absence of findings. Because Congress did make findings (though not until after Lopez was prosecuted), doing so would appear to elevate form over substance. See Pub.L. 103-322, §§ 320904(2)(F), (G), 108 Stat. 2125, 18 U.S.C. §§ 922(q)(1)(F), (G).

In addition, despite the Court of Appeals' suggestion to the contrary, see 2 F.3d 1342, 1365 (CA5 1993), there is no special need here for a clear indication of Congress' rationale. The statute does not interfere with the exercise of state or local authority. Cf., *e.g., Dellmuth v. Muth,* 491 U.S. 223, 227-228, 109 S.Ct. 2397, 2399-2400, 105 L.Ed.2d 181 (1989) (requiring clear statement for abrogation of Eleventh Amendment immunity). Moreover, any clear statement rule would apply only to determine Congress' intended result, *not* to clarify the source of its authority or measure the level of consideration that went into its decision, and here there is no doubt as to which activities Congress intended to regulate. See *ibid.; id.,* at 233, 109 S.Ct., at 2403 (SCALIA, J., concurring) (to subject States to suits for money damages, Congress need only make that intent clear, and need not refer explicitly to the Eleventh Amendment); *EEOC v. Wyoming,* 460 U.S. 226, 243, n. 18, 103 S.Ct. 1054, n. 18, 75 L.Ed.2d 18 (1983) (Congress need not recite the constitutional provision that authorizes its action).

II

Applying these principles to the case at hand, we must ask whether Congress could have had a *rational basis* for finding a significant (or substantial) connection between gun-related school violence and interstate commerce. Or, to put the question in the language of the *explicit* finding that Congress made when it amended this law in 1994: Could Congress rationally have found that "violent crime in school zones," through its effect on the "quality of education," significantly (or substantially) affects "interstate" or "foreign commerce"? 18 U.S.C. §§ 922(q)(1)(F), (G). As long as one views the commerce connection, not as a "technical legal conception," but as "a practical one," *Swift & Co. v. United States,* 196 U.S. 375, 398, 25 S. Ct. 276, 280, 49 L.Ed. 518 (1905) (Holmes, J.), the answer to this question must be yes. Numerous reports and studies--generated both inside and outside government--make clear that Congress could reasonably have found the empirical connection that its law, implicitly or explicitly, asserts. (See Appendix, *infra,* at 1665, for a sample of the documentation, as well as for complete citations to the sources referenced below.)

For one thing, reports, hearings, and other readily available literature make clear that the problem of guns in and around schools is widespread and extremely serious. These materials report, for example, that four percent of American high school students (and six percent of inner-city high school students) carry a gun to school at least occasionally, Centers for Disease Control 2342; Sheley, McGee, & Wright 679; that 12 percent of urban high school students have had guns fired at them, *ibid.;* that 20 percent of those students have been threatened with guns, *ibid.;* and that, in any 6- month period, several hundred thousand schoolchildren are victims of violent crimes in or near their schools, U.S. Dept. of Justice 1 (1989); House Select Committee Hearing 15 (1989). And, they report that this widespread violence in schools throughout

the Nation significantly interferes with the quality of education in those schools. See, *e.g.*, House Judiciary Committee Hearing 44 (1990) (linking school violence to dropout rate); U.S. Dept. of Health 118- 119 (1978) (school-violence victims suffer academically); compare U.S. Dept. of Justice 1 (1991) (gun violence worst in inner-city schools), with National Center 47 (dropout rates highest in inner cities). Based on reports such as these, Congress obviously could have thought that guns and learning are mutually exclusive. Senate Labor and Human Resources Committee Hearing 39 (1993); U.S. Dept. of Health 118, 123-124 (1978). Congress could therefore have found a substantial educational problem--teachers unable to teach, students unable to learn--and concluded that guns near schools contribute substantially to the size and scope of that problem.

Having found that guns in schools significantly undermine the quality of education in our Nation's classrooms, Congress could also have found, given the effect of education upon interstate and foreign commerce, that gun-related violence in and around schools is a commercial, as well as a human, problem. Education, although far more than a matter of economics, has long been inextricably intertwined with the Nation's economy. When this Nation began, most workers received their education in the workplace, typically (like Benjamin Franklin) as apprentices. See generally Seybolt; Rorabaugh; U.S. Dept. of Labor (1950). As late as the 1920's, many workers still received general education directly from their employers--from large corporations, such as General Electric, Ford, and Goodyear, which created schools within their firms to help both the worker and the firm. See Bolino 15-25. (Throughout most of the 19th century fewer than one percent of all Americans received secondary education through attending a high school. See *id.*, at 11.) As public school enrollment grew in the early 20th century, see Becker 218 (1993), the need for industry to teach basic educational skills diminished. But, the direct economic link between basic education and industrial productivity remained. Scholars estimate that nearly a quarter of America's economic growth in the early years of this century is traceable directly to increased schooling, see Denison 243; that investment in "human capital" (through spending on education) exceeded investment in "physical capital" by a ratio of almost two to one, see Schultz 26 (1961); and that the economic returns to this investment in education exceeded the returns to conventional capital investment, see, *e.g.*, Davis & Morrall 48-49.

In recent years the link between secondary education and business has strengthened, becoming both more direct and more important. Scholars on the subject report that technological changes and innovations in management techniques have altered the nature of the workplace so that more jobs now demand greater educational skills. See, *e.g.*, MIT 32 only about one- third of hand tool company's 1,000 workers were qualified to work with a new process that requires high-school-level reading and mathematical skills); Cyert & Mowery 68 (gap between wages of high school dropouts and better trained workers increasing); U.S. Dept. of Labor 41 (1981) (job openings for dropouts declining over time). There is evidence that "service, manufacturing or construction jobs are being displaced by technology that requires a better- educated worker or, more likely, are being exported overseas," Gordon, Ponticell, & Morgan 26; that "workers with truly few skills by the year 2000 will find that only one job out of ten will remain," *ibid.;* and that

> "[o]ver the long haul the best way to encourage the growth of high-wage jobs is to upgrade the skills of the work force.... [B]etter-trained workers become more productive workers, enabling a company to become more competitive and expand." Henkoff 60.

Increasing global competition also has made primary and secondary education economically more important. The portion of the American economy attributable to international trade nearly tripled between 1950 and 1980, and more than 70 percent of American-made goods now compete with imports. Marshall 205; Marshall & Tucker 33. Yet, lagging worker productivity has contributed to negative trade balances and to real hourly compensation that has fallen below wages in 10 other industrialized nations. See National

Center 57; Handbook of Labor Statistics 561, 576 (1989); Neef & Kask 28, 31. At least some significant part of this serious productivity problem is attributable to students who emerge from classrooms without the reading or mathematical skills necessary to compete with their European or Asian counterparts, see, *e.g.*, MIT 28, and, presumably, to high school dropout rates of 20 to 25 percent (up to 50 percent in inner cities), see, *e. g.*, National Center 47; Chubb & Hanushek 215. Indeed, Congress has said, when writing other statutes, that "functionally or technologically illiterate" Americans in the work force "erod [e]" our economic "standing in the international marketplace," Pub.L. 100-418, § 6002(a)(3), 102 Stat. 1469, and that "[o]ur Nation is ... paying the price of scientific and technological illiteracy, with our productivity declining, our industrial base ailing, and our global competitiveness dwindling," H.R.Rep. No. 98-6, pt. 1, p. 19 (1983).

Finally, there is evidence that, today more than ever, many firms base their location decisions upon the presence, or absence, of a work force with a basic education. See MacCormack, Newman, & Rosenfield 73; Coffee 296. Scholars on the subject report, for example, that today, "[h]igh speed communication and transportation make it possible to produce most products and services anywhere in the world," National Center 38; that "[m]odern machinery and production methods can therefore be combined with low wage workers to drive costs down," *ibid.;* that managers can perform " 'back office functions anywhere in the world now,' " and say that if they " 'can't get enough skilled workers here' " they will " 'move the skilled jobs out of the country,' " *id.*, at 41; with the consequence that "rich countries need better education and retraining, to reduce the supply of unskilled workers and to equip them with the skills they require for tomorrow's jobs," Survey of Global Economy 37. In light of this increased importance of education to individual firms, it is no surprise that half of the Nation's manufacturers have become involved with setting standards and shaping curricula for local schools, Maturi 65-68, that 88 percent think this kind of involvement is important, *id.*, at 68, that more than 20 States have recently passed educational reforms to attract new business, Overman 61-62, and that business magazines have begun to rank cities according to the quality of their schools, see Boyle 24.

The economic links I have just sketched seem fairly obvious. Why then is it not equally obvious, in light of those links, that a widespread, serious, and substantial physical threat to teaching and learning *also* substantially threatens the commerce to which that teaching and learning is inextricably tied? That is to say, guns in the hands of six percent of inner- city high school students and gun-related violence throughout a city's schools must threaten the trade and commerce that those schools support. The only question, then, is whether the latter threat is (to use the majority's terminology) "substantial." The evidence of (1) the *extent* of the gun-related violence problem, see *supra,* at 1659, (2) the *extent* of the resulting negative effect on classroom learning, see *ibid.* and (3) the *extent* of the consequent negative commercial effects, see *supra,* at 1659-1661, when taken together, indicate a threat to trade and commerce that is "substantial." At the very least, Congress could rationally have concluded that the links are "substantial."

Specifically, Congress could have found that gun-related violence near the classroom poses a serious economic threat (1) to consequently inadequately educated workers who must endure low paying jobs, see, *e. g.*, National Center 29, and (2) to communities and businesses that might (in today's "information society") otherwise gain, from a well-educated work force, an important commercial advantage, see, *e.g.*, Becker 10 (1992), of a kind that location near a railhead or harbor provided in the past. Congress might also have found these threats to be no different in kind from other threats that this Court has found within the commerce power, such as the threat that loan sharking poses to the "funds" of "numerous localities," *Perez v. United States,* 402 U.S., at 157, 91 S.Ct., at 1362-1363, and that unfair labor practices pose to instrumentalities of commerce, see *Consolidated Edison Co. v. NLRB,* 305 U.S. 197, 221-222, 59 S.Ct. 206, 213-214, 83 L.Ed. 126 (1938). As I have pointed out, *supra,* at 1659, Congress has written that "the occurrence of violent crime in school zones" has brought about a "decline in the quality of education" that "has an adverse impact on

interstate commerce and the foreign commerce of the United States." 18 U.S.C. §§ 922(q)(1)(F), (G). The violence-related facts, the educational facts, and the economic facts, taken together, make this conclusion rational. And, because under our case law, see *supra*, at 1657-1658; *infra*, at 1663, the sufficiency of the constitutionally necessary Commerce Clause link between a crime of violence and interstate commerce turns simply upon size or degree, those same facts make the statute constitutional.

To hold this statute constitutional is not to "obliterate" the "distinction between what is national and what is local," *ante*, at 1633 (citation omitted; internal quotation marks omitted); nor is it to hold that the Commerce Clause permits the Federal Government to "regulate any activity that it found was related to the economic productivity of individual citizens," to regulate "marriage, divorce, and child custody," or to regulate any and all aspects of education. *Ante*, at 1632. First, this statute is aimed at curbing a particularly acute threat to the educational process--the possession (and use) of life-threatening firearms in, or near, the classroom. The empirical evidence that I have discussed above unmistakably documents the special way in which guns and education are incompatible. See *supra*, at 1659. This Court has previously recognized the singularly disruptive potential on interstate commerce that acts of violence may have. See *Perez, supra*, 402 U.S., at 156-157, 91 S.Ct., at 1362-1363. Second, the immediacy of the connection between education and the national economic well-being is documented by scholars and accepted by society at large in a way and to a degree that may not hold true for other social institutions. It must surely be the rare case, then, that a statute strikes at conduct that (when considered in the abstract) seems so removed from commerce, but which (practically speaking) has so significant an impact upon commerce.

In sum, a holding that the particular statute before us falls within the commerce power would not expand the scope of that Clause. Rather, it simply would apply preexisting law to changing economic circumstances. See *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 251, 85 S.Ct. 348, 354, 13 L.Ed.2d 258 (1964). It would recognize that, in today's economic world, gun-related violence near the classroom makes a significant difference to our economic, as well as our social, well-being. In accordance with well-accepted precedent, such a holding would permit Congress "to act in terms of economic ... realities," would interpret the commerce power as "an affirmative power commensurate with the national needs," and would acknowledge that the "commerce clause does not operate so as to render the nation powerless to defend itself against economic forces that Congress decrees inimical or destructive of the national economy." *North American Co. v. SEC*, 327 U.S. 686, 705, 66 S.Ct. 785, 796, 90 L.Ed. 945 (1946) (citing *Swift & Co. v. United States*, 196 U.S., at 398, 25 S.Ct., at 280 (Holmes, J.)).

III

The majority's holding--that § 922 falls outside the scope of the Commerce Clause--creates three serious legal problems. First, the majority's holding runs contrary to modern Supreme Court cases that have upheld congressional actions despite connections to interstate or foreign commerce that are less significant than the effect of school violence. In *Perez v. United States, supra*, the Court held that the Commerce Clause authorized a federal statute that makes it a crime to engage in loan sharking ("[e]xtortionate credit transactions") at a local level. The Court said that Congress may judge that such transactions, "though purely *intra*state, ... affect *inter*state commerce." 402 U.S., at 154, 91 S.Ct., at 1361 (emphasis added). Presumably, Congress reasoned that threatening or using force, say with a gun on a street corner, to collect a debt occurs sufficiently often so that the activity (by helping organized crime) affects commerce among the States. But, why then cannot Congress also reason that the threat or use of force--the frequent consequence of possessing a gun--in or near a school occurs sufficiently often so that such activity (by inhibiting basic education) affects commerce among the States? The negative impact upon the national economy of an inability to teach basic

skills seems no smaller (nor less significant) than that of organized crime.

In *Katzenbach v. McClung,* 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964), this Court upheld, as within the commerce power, a statute prohibiting racial discrimination at local restaurants, in part because that discrimination discouraged travel by African Americans and in part because that discrimination affected purchases of food and restaurant supplies from other States. See *id.,* at 300, 85 S.Ct., at 381-382; *Heart of Atlanta Motel, supra,* 379 U.S., at 274, 85 S.Ct., at 366 (Black, J., concurring in *McClung* and in *Heart of Atlanta*). In *Daniel v. Paul,* 395 U.S. 298, 89 S.Ct. 1697, 23 L.Ed.2d 318 (1969), this Court found an effect on commerce caused by an amusement park located several miles down a country road in the middle of Alabama--because some customers (the Court assumed), some food, 15 paddleboats, and a juke box had come from out of state. See *id.,* at 304-305, 308, 89 S.Ct., at 1700-1701, 1702. In both of these cases, the Court understood that the specific instance of discrimination (at a local place of accommodation) was part of a general practice that, considered as a whole, caused not only the most serious human and social harm, but had nationally significant economic dimensions as well. See *McClung, supra,* 379 U.S., at 301, 85 S.Ct., at 382; *Daniel, supra,* 395 U.S., at 307, n. 10, 89 S.Ct., at 1702, n. 10. It is difficult to distinguish the case before us, for the same critical elements are present. Businesses are less likely to locate in communities where violence plagues the classroom. Families will hesitate to move to neighborhoods where students carry guns instead of books. (Congress expressly found in 1994 that "parents may decline to send their children to school" in certain areas "due to concern about violent crime and gun violence." 18 U.S.C. § 922(q)(1)(E).) And (to look at the matter in the most narrowly commercial manner), interstate publishers therefore will sell fewer books and other firms will sell fewer school supplies where the threat of violence disrupts learning. Most importantly, like the local racial discrimination at issue in *McClung* and *Daniel,* the local instances here, taken together and considered as a whole, create a problem that causes serious human and social harm, but also has nationally significant economic dimensions.

In *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), this Court sustained the application of the Agricultural Adjustment Act of 1938 to wheat that Filburn grew and consumed on his own local farm because, considered in its totality, (1) homegrown wheat may be "induced by rising prices" to "flow into the market and check price increases," and (2) even if it never actually enters the market, home-grown wheat nonetheless "supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market" and, in that sense, "competes with wheat in commerce." *Id.,* at 128, 63 S.Ct., at 91. To find both of these effects on commerce significant in amount, the Court had to give Congress the benefit of the doubt. Why would the Court, to find a significant (or "substantial") effect here, have to give Congress any greater leeway? See also *United States v. Women's Sportswear Mfrs. Assn.,* 336 U.S. 460, 464, 69 S.Ct. 714, 716, 93 L.Ed. 805 (1949) ("If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze"); *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.,* 334 U. S., at 236, 68 S.Ct., at 1006 ("[I]t is enough that the individual activity when multiplied into a general practice ... contains a threat to the interstate economy that requires preventive regulation").

The second legal problem the Court creates comes from its apparent belief that it can reconcile its holding with earlier cases by making a critical distinction between "commercial" and noncommercial "transaction [s]." *Ante,* at 1630-1631. That is to say, the Court believes the Constitution would distinguish between two local activities, each of which has an identical effect upon interstate commerce, if one, but not the other, is "commercial" in nature. As a general matter, this approach fails to heed this Court's earlier warning not to turn "questions of the power of Congress" upon "formula[s]" that would give

> "controlling force to nomenclature such as 'production' and 'indirect' and foreclose consideration of the actual effects of the activity in question upon interstate commerce."

Wickard, supra, 317 U.S., at 120, 63 S.Ct., at 87.

See also *United States v. Darby,* 312 U.S. 100, 116-117, 61 S.Ct. 451, 458- 459, 85 L.Ed. 609 (1941) (overturning the Court's distinction between "production" and "commerce" in the child labor case, *Hammer v. Dagenhart,* 247 U.S. 251, 271-272, 38 S.Ct. 529, 531, 62 L.Ed. 1101 (1918)); *Swift & Co. v. United States,* 196 U.S., at 398, 25 S.Ct., at 280 (Holmes, J.) ("[C]ommerce among the States is not a technical legal conception, but a practical one, drawn from the course of business"). Moreover, the majority's test is not consistent with what the Court saw as the point of the cases that the majority now characterizes. Although the majority today attempts to categorize *Perez, McClung,* and *Wickard* as involving intrastate "economic activity," *ante,* at 1630, the Courts that decided each of those cases did *not* focus upon the economic nature of the activity regulated. Rather, they focused upon whether that activity *affected* interstate or foreign commerce. In fact, the *Wickard* Court expressly held that Filburn's consumption of home-grown wheat, "*though it may not be regarded as commerce,*" could nevertheless be regulated--"*whatever its nature* "--so long as "it exerts a substantial economic effect on interstate commerce." *Wickard, supra,* 317 U.S. at 125, 63 S.Ct., at 89 (emphasis added).

More importantly, if a distinction between commercial and noncommercial activities is to be made, this is not the case in which to make it. The majority clearly cannot intend such a distinction to focus narrowly on an act of gun possession standing by itself, for such a reading could not be reconciled with either the civil rights cases (*McClung* and *Daniel*) or *Perez*--in each of those cases the specific transaction (the race-based exclusion, the use of force) was not itself "commercial." And, if the majority instead means to distinguish generally among broad categories of activities, differentiating what is educational from what is commercial, then, as a practical matter, the line becomes almost impossible to draw. Schools that teach reading, writing, mathematics, and related basic skills serve *both* social and commercial purposes, and one cannot easily separate the one from the other. American industry itself has been, and is again, involved in teaching. See *supra,* at 1659, 1661. When, and to what extent, does its involvement make education commercial? Does the number of vocational classes that train students directly for jobs make a difference? Does it matter if the school is public or private, nonprofit or profit seeking? Does it matter if a city or State adopts a voucher plan that pays private firms to run a school? Even if one were to ignore these practical questions, why should there be a theoretical distinction between education, when it significantly benefits commerce, and environmental pollution, when it causes economic harm? See *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U.S. 264, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981).

Regardless, if there is a principled distinction that could work both here and in future cases, Congress (even in the absence of vocational classes, industry involvement, and private management) could rationally conclude that schools fall on the commercial side of the line. In 1990, the year Congress enacted the statute before us, primary and secondary schools spent $230 billion--that is, nearly a quarter of a trillion dollars--which accounts for a significant portion of our $5.5 trillion gross domestic product for that year. See Statistical Abstract 147, 442 (1993). The business of schooling requires expenditure of these funds on student transportation, food and custodial services, books, and teachers' salaries. See U.S. Dept. of Education 4, 7 (1993). These expenditures enable schools to provide a valuable service-- namely, to equip students with the skills they need to survive in life and, more specifically, in the workplace. Certainly, Congress has often analyzed school expenditure as if it were a commercial investment, closely analyzing whether schools are efficient, whether they justify the significant resources they spend, and whether they can be restructured to achieve greater returns. See, *e.g.,* S.Rep. No. 100-222, p. 2 (1987) (federal school assistance is "a prudent investment"); Senate Appropriations Committee Hearing (1994) (private sector management of public schools); cf. Chubb & Moe 185-229 (school choice); Hanushek 85-122 (performance based incentives for educators); Gibbs (decision in Hartford, Conn., to contract out public school system).

Why could Congress, for Commerce Clause purposes, not consider schools as roughly analogous to commercial investments from which the Nation derives the benefit of an educated work force?

The third legal problem created by the Court's holding is that it threatens legal uncertainty in an area of law that, until this case, seemed reasonably well settled. Congress has enacted many statutes (more than 100 sections of the United States Code), including criminal statutes (at least 25 sections), that use the words "affecting commerce" to define their scope, see, *e.g.*, 18 U.S.C. § 844(i) (destruction of buildings used in activity affecting interstate commerce), and other statutes that contain no jurisdictional language at all, see, *e. g.*, 18 U.S.C. § 922(*o*)(1) (possession of machineguns). Do these, or similar, statutes regulate noncommercial activities? If so, would that alter the meaning of "affecting commerce" in a jurisdictional element? Cf. *United States v. Staszcuk*, 517 F.2d 53, 57-58 (CA7 1975) (en banc) (Stevens, J.) (evaluation of Congress' intent "requires more than a consideration of the consequences of the particular transaction"). More importantly, in the absence of a jurisdictional element, are the courts nevertheless to take *Wickard*, 317 U.S., at 127-128, 63 S.Ct., at 90-91 (and later similar cases) as inapplicable, and to judge the effect of a single noncommercial activity on interstate commerce without considering similar instances of the forbidden conduct? However these questions are eventually resolved, the legal uncertainty now created will restrict Congress' ability to enact criminal laws aimed at criminal behavior that, considered problem by problem rather than instance by instance, seriously threatens the economic, as well as social, well-being of Americans.

IV

In sum, to find this legislation within the scope of the Commerce Clause would permit "Congress ... to act in terms of economic ... realities." *North American Co. v. SEC*, 327 U.S., at 705, 66 S.Ct., at 796 (citing *Swift & Co. v. United States*, 196 U.S., at 398, 25 S.Ct., at 280 (Holmes, J.)). It would interpret the Clause as this Court has traditionally interpreted it, with the exception of one wrong turn subsequently corrected. See *Gibbons v. Ogden*, 9 Wheat., at 195 (holding that the commerce power extends "to all the external concerns of the nation, and to those internal concerns which affect the States generally"); *United States v. Darby*, 312 U.S., at 116-117, 61 S.Ct., at 458 ("The conclusion is inescapable that *Hammer v. Dagenhart* [the child labor case] was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision.... It should be and now is overruled"). Upholding this legislation would do no more than simply recognize that Congress had a "rational basis" for finding a significant connection between guns in or near schools and (through their effect on education) the interstate and foreign commerce they threaten. For these reasons, I would reverse the judgment of the Court of Appeals. Respectfully, I dissent.

APPENDIX TO OPINION OF BREYER, J.

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(in reverse chronological order)

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Footnotes:

FN1. The term "school zone" is defined as "in, or on the grounds of, a public, parochial or private school" or "within a distance of 1,000 feet from the grounds of a public, parochial or private school." § 921(a)(25).

FN2. See also *Hodel,* 452 U.S., at 311, 101 S.Ct., at 2391 ("[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so") (REHNQUIST, J., concurring in judgment); *Heart of Atlanta Motel,* 379 U.S., at 273, 85 S.Ct., at 366 ("[W]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court") (Black, J., concurring).

FN3. Under our federal system, the " 'States possess primary authority for defining and enforcing the criminal law.' " *Brecht v. Abrahamson,* 507 U.S. 619, 635, 113 S.Ct. 1710, 1720, 123 L.Ed.2d 353 (1993) (quoting *Engle v. Isaac,* 456 U.S. 107, 128, 102 S.Ct. 1558, 1572, 71 L.Ed.2d 783 (1982)); see also *Screws v. United States,* 325 U.S. 91, 109, 65 S.Ct. 1031, 1039, 89 L.Ed. 1495 (1945) (plurality opinion) ("Our national government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States"). When Congress criminalizes conduct already denounced as

criminal by the States, it effects a " 'change in the sensitive relation between federal and state criminal jurisdiction.' " *United States v. Enmons*, 410 U.S. 396, 411-412, 93 S.Ct. 1007, 1015- 1016, 35 L.Ed.2d 379 (1973) (quoting *United States v. Bass*, 404 U.S. 336, 349, 92 S.Ct. 515, 523, 30 L.Ed.2d 488 (1971)). The Government acknowledges that § 922(q) "displace[s] state policy choices in ... that its prohibitions apply even in States that have chosen not to outlaw the conduct in question." Brief for United States 29, n. 18; see also Statement of President George Bush on Signing the Crime Control Act of 1990, 26 Weekly Comp. of Pres. Doc. 1944, 1945 (Nov. 29, 1990) ("Most egregiously, section [922(q)] inappropriately overrides legitimate State firearms laws with a new and unnecessary Federal law. The policies reflected in these provisions could legitimately be adopted by the States, but they should not be imposed upon the States by the Congress").

FN4. We note that on September 13, 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994, Pub.L. 103-322, 108 Stat. 1796. Section 320904 of that Act, *id.*, at 2125, amends § 922(q) to include congressional findings regarding the effects of firearm possession in and around schools upon interstate and foreign commerce. The Government does not rely upon these subsequent findings as a substitute for the absence of findings in the first instance. Tr. of Oral Arg. 25 ("[W]e're not relying on them in the strict sense of the word, but we think that at a very minimum they indicate that reasons can be identified for why Congress wanted to regulate this particular activity").

Justice Thomas' Opinion:

FN1. All references to The Federalist are to the Jacob E. Cooke 1961 edition.

FN2. Even to speak of "the Commerce Clause" perhaps obscures the actual scope of that Clause. As an original matter, Congress did not have authority to regulate all commerce; Congress could only "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const., Art. I, § 8, cl. 3. Although the precise line between interstate/foreign commerce and purely intrastate commerce was hard to draw, the Court attempted to adhere to such a line for the first 150 years of our Nation. See *infra*, at 1646-1649.

FN3. There are other powers granted to Congress outside of Art. I, § 8, that may become wholly superfluous as well due to our distortion of the Commerce Clause. For instance, Congress has plenary power over the District of Columbia and the territories. See U.S. Const., Art. I, § 8, cl. 17, and Art. IV, § 3, cl. 2. The grant of comprehensive legislative power over certain areas of the Nation, when read in conjunction with the rest of the Constitution, further confirms that Congress was not ceded plenary authority over the *whole* Nation.

FN4. Cf. 3 Debates 40 (E. Pendleton at the Virginia convention) (The proposed Federal Government "does not intermeddle with the local, particular affairs of the states. Can Congress legislate for the state of Virginia? Can [it] make a law altering the form of transferring property, or the rule of descents, in Virginia?"); *id.*, at 553 (J. Marshall at the Virginia convention) (denying that Congress could make "laws affecting the mode of transferring property, or contracts, or claims, between citizens of the same state"); The Federalist No. 33, at 206 (A. Hamilton) (denying that Congress could change laws of descent or could pre-empt a land tax); A Native of Virginia: Observations upon the Proposed Plan of Federal Government, Apr. 2, 1788, in 9 Documentary History 692 (States have sole authority over "rules of property").

FN5. None of the other Commerce Clause opinions during Chief Justice Marshall's tenure, which concerned the "dormant" Commerce Clause, even suggested that Congress had authority over all matters substantially affecting commerce. See *Brown v. Maryland*, 12 Wheat. 419, 6 L.Ed. 678 (1827); *Willson v. Black Bird*

Creek Marsh Co., 2 Pet. 245, 7 L.Ed. 412 (1829).

FN6. It is worth noting that Congress, in the first federal criminal Act, did not establish nationwide prohibitions against murder and the like. See Act of Apr. 30, 1790, ch. 9, 1 Stat. 112. To be sure, Congress outlawed murder, manslaughter, maiming, and larceny, but only when those acts were either committed on United States territory not part of a State or on the high seas. *Ibid.* See U.S. Const., Art. I, § 8, cl. 10 (authorizing Congress to outlaw piracy and felonies on high seas); Art. IV, § 3, cl. 2 (plenary authority over United States territory and property). When Congress did enact nationwide criminal laws, it acted pursuant to direct grants of authority found in the Constitution. Compare Act of Apr. 30, 1790, *supra,* §§ 1 and 14 (prohibitions against treason and the counterfeiting of U.S. securities), with U.S. Const., Art. I, § 8, cl. 6 (counterfeiting); Art. III, § 3, cl. 2 (treason). Notwithstanding any substantial effects that murder, kidnaping, or gun possession might have had on interstate commerce, Congress understood that it could not establish nationwide prohibitions.

FN7. To be sure, congressional power pursuant to the Commerce Clause was alternatively described less narrowly or more narrowly during this 150- year period. Compare *United States v. Coombs,* 12 Pet. 72, 78, 9 L.Ed. 1004 (1838) (commerce power "extends to such acts, done on land, which interfere with, obstruct, or prevent the due exercise of the power to regulate [interstate and international] commerce" such as stealing goods from a beached ship), with *United States v. E.C. Knight Co.*, 156 U.S. 1, 13, 15 S.Ct. 249, 254, 39 L. Ed. 325 (1895) ("Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities ... may be regulated, but this is because they form part of interstate trade or commerce"). During this period, however, this Court never held that Congress could regulate everything that substantially affects commerce.

FN8. Although I might be willing to return to the original understanding, I recognize that many believe that it is too late in the day to undertake a fundamental reexamination of the past 60 years. Consideration of *stare decisis* and reliance interests may convince us that we cannot wipe the slate clean.

FN9. Nor can the majority's opinion fairly be compared to *Lochner v. New York,* 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905). See *post,* at 1651-1654 (SOUTER, J., dissenting). Unlike *Lochner* and our more recent "substantive due process" cases, today's decision enforces only the Constitution and not "judicial policy judgments." See *post,* at 1653. Notwithstanding Justice SOUTER's discussion, " 'commercial' character" is not only a natural but an inevitable "ground of *Commerce* Clause distinction." See *post,* at 1654 (emphasis added). Our invalidation of the Gun-Free School Zones Act therefore falls comfortably within our proper role in reviewing federal legislation to determine if it exceeds congressional authority as defined by the Constitution itself. As John Marshall put it: "If [Congress] were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard.... They would declare it void." 3 Debates 553 (before the Virginia ratifying convention); see also The Federalist No. 44, at 305 (J. Madison) (asserting that if Congress exercises powers "not warranted by [the Constitution's] true meaning" the judiciary will defend the Constitution); *id.,* No. 78, at 526 (A. Hamilton) (asserting that the "courts of justice are to be considered as the bulwarks of a limited constitution against legislative encroachments"). Where, as here, there is a case or controversy, there can be no "misstep," *post,* at 1657, in enforcing the Constitution.

Stevens' Dissent:

FN* Indeed, there is evidence that firearm manufacturers--aided by a federal grant--are specifically targeting schoolchildren as consumers by distributing, at schools, hunting-related videos styled "educational materials for grades four through 12," Herbert, Reading, Writing, Reloading, N.Y. Times, Dec. 14, 1994, p. A23, col. 1.

Souter's Dissent:

FN1. In this case, no question has been raised about means and ends; the only issue is about the effect of school zone guns on commerce.

FN2. Unlike the Court, (perhaps), I would see no reason not to consider Congress's findings, insofar as they might be helpful in reviewing the challenge to this statute, even though adopted in later legislation. See the Violent Crime Control and Law Enforcement Act of 1994, Pub.L. 103-322, § 320904, 108 Stat. 2125 ("[T]he occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country; ... this decline ... has an adverse impact on interstate commerce and the foreign commerce of the United States; ... Congress has power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection"). The findings, however, go no further than expressing what is obviously implicit in the substantive legislation, at such a conclusory level of generality as to add virtually nothing to the record. The Solicitor General certainly exercised sound judgment in placing no significant reliance on these particular afterthoughts. Tr. of Oral Arg. 24-25.

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§ 126. Reports to Congress

How Current is This?

The Administrator of General Services, at times the Administrator considers desirable, shall submit a report to Congress on the administration of this subtitle. The report shall include any recommendation for amendment of this subtitle that the Administrator considers appropriate and shall identify any law that is obsolete because of the enactment or operation of this subtitle.

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Sec. 255. - Approval of title prior to Federal land purchases; payment of title expenses; application to Tennessee Valley Authority; Federal jurisdiction over acquisitions

Unless the Attorney General gives prior written approval of the sufficiency of the title to land for the purpose for which the property is being acquired by the United States, public money may not be expended for the purchase of the land or any interest therein.

The Attorney General may delegate his responsibility under this section to other departments and agencies, subject to his general supervision and in accordance with regulations promulgated by him.

Any Federal department or agency which has been delegated the responsibility to approve land titles under this section may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

Except where otherwise authorized by law or provided by contract, the expenses of procuring certificates of titles or other evidences of title as the Attorney General may require may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department or agency.

The foregoing provisions of this section shall not be construed to affect in any manner any existing provisions of law which are applicable to the acquisition of lands or interests in land by the Tennessee Valley Authority.

Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such

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cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted

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Jurisdiction Over Federal Areas Within the States

Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States

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JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

REPORT OF THE INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

PART I

The Facts and Committee Recommendations

Submitted to the Attorney General and transmitted to the President

April 1956

Reprinted by Constitutional Research Associates
P.O. Box 550
So. Holland, Illinois 06473

The White House,
Washington, April 27, 1956

DEAR MR. ATTORNEY GENERAL: I am herewith returning to you, so that it may be published and receive the widest possible distribution among those interested in Federal real property matters, part I of the Report of the Interdepartmental Committee for Study of Jurisdiction over Federal Areas within the States. I am impressed by the well-planned effort which went into the study underlying this report and by the soundness of the recommendations which the report makes.

It would seem particularly desirable that the report be brought to the attention of the Federal administrators of real properties, who should be guided by it in matters related to legislative jurisdiction, and to the President of the Senate, the Speaker of the House of Representatives, and appropriate State officials, for their consideration of necessary legislation. I hope that you will see to this. I hope, also, that the General services Administration will establish as soon as may be possible a central source of information concerning the legislative jurisdictional status of Federal properties

and that agency, with the Bureau of the Budget and the Department of Justice, will maintain a continuing and concerted interest in the progress made by all Federal agencies in adjusting the status of their properties in conformity with the recommendations made in the report.

The members of the committee and the other officials, Federal and State, who participated in the study, have my appreciation and congratulations on this report. I hope they will continue their good efforts so that the text of the law on the subject of legislative jurisdiction which is planned as a supplement will issue as soon as possible.

Sincerely,
DWIGHT D. EISENHOWER.

The Honorable Herbert Brownell, Jr.,
The Attorney General, Washington, D.C.

LETTER OF TRANSMITTAL

Office of the Attorney General,
Washington, D.C., April 27,1956.

DEAR MR. PRESIDENT: On my recommendation, and with your approval, there was organized on December 15, 1954, an interdepartmental committee to study problems of jurisdiction related to federally owned property within the States.

This Committee has labored diligently during the ensuing period and now has produced a factual report (part I), together with recommendations for changes in Federal agency practices, and in Federal and State laws, designed to eliminate existing problems arising out of Federal-State Jurisdictional situations.

Subject to your approval, I shall bring the report and recommendations to the attention of the President of the Senate and the Speaker of the House of Representatives for the purpose of bringing about consideration of the Federal legislative proposals involved to the attention of State officials through established channels for consideration of the State legislative proposals involved, and to the attention of heads of Federal Departments and agencies, for their guidance in matters relating to this subject.

Part II of the Committee's report is now in course of preparation and will be completed in the next several months. It will be a text which will discuss the law applicable to Federal jurisdiction over land owned in the States. Immediately upon completion of the legal text it will be sent to you. The Committee is of the view, in which I concur, that the two parts of the report are sufficiently different in content and purpose that they may issue separately.

Respectfully,
Herbert Brownell, Jr.,
Attorney General

THE PRESIDENT,
THE WHITE HOUSE.

LETTER OF SUBMISSION

INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF
JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES,
APRIL 25, 1956

DEAR MR. ATTORNEY GENERAL: The Committee has completed its studies of the factual aspects of legislative jurisdiction over Federal areas within the several States, and of the Federal and State laws relating thereto, and herewith submits for your consideration and for transmission to the President its report subtitled "Part I. the Facts and Committee Recommendations."

Part II of the Committee's report will be completed within the next several months. It will be a text of the law on the subject of legislative jurisdiction, particularly covering judicial decisions and rulings of legal officers of administrative agencies concerning the subject. It is the view of the Committee that the two mentioned parts of the report are sufficiently different in their contents and purposes that they may issue separately.

Respectfully submitted,

PERRY W. MORTON,
Assistant Attorney General (Chairman).
MANSFIELD D. SPRAGUE,
General Counsel,
General Services Administration (Secretary).
MAXWELL H. ELLIOTT,
General Counsel,
General Services Administration (Secretary).
ARTHUR B. FOCKE,
Legal Adviser, Bureau of the Budget.
J. REUEL ARMSTRONG,
Solicitor, Department of the Interior.
ROBERT L. FARRINGTON,
General Counsel, Department of Agriculture.
PARKE M. BANTA,
General Counsel,
Department of Health, Education, and Welfare.
EDWARD E. ODOM,
Retired as General Counsel,
Veterans' Administration.

PREFACE

The Interdepartmental Committee was formed on December 15, 1954, on the recommendation of the Attorney General, approved by the President and the Cabinet, that a study be undertaken with a view toward resolving problems arising out of the jurisdictional status of federally owned areas within the several States, and that in the first instance this study by conducted by a committee of representatives of eight certain departments and agencies of the Federal Government which have a principal interest in such problems. The Bureau of the Budget, the Departments of Defense, Justice, Interior, Agriculture, and Health, Education, and Welfare, the General Services Administration,

and the Veterans' Administration are directly represented on the Committee, the Department of Justice through the Assistant Attorney General in charge of the Lands Division of that Department, and each of the other agencies through its General Counsel, Solicitor, or Legal Adviser. The Committee staff was assembled by detail, for varying periods, of personnel from the member agencies.

Twenty-five other agencies of the Federal Government furnished to the Committee information concerning their properties and concerning problems relating to legislative jurisdiction, without which information the study would not have been possible. The agencies, other than those represented on the Committee, which participated in this manner are:

Department of State
Department of the Treasury
Post Office Department
Department of Commerce
Department of Labor
Arlington Memorial Amphitheater Commission
Atomic Energy Commission
Central Intelligence Agency
Civil Aeronautics Board
Farm Credit Administration
Federal Civil Defense Administration
Federal Communications Commission
Federal Power Commission
General Accounting Office

Housing and Home Finance Agency
International Boundary and Water Commission, United States and Mexico
Library of Congress
National Advisory Committee for Aeronautic
Office of Defense Mobilization
Railroad Retirement Board
Rubber Producing Facilities Disposal Commission
Saint Lawrence Seaway Development Corporation
Small Business Administration
Tennessee Valley Authority
United States Information Agency

Acknowledgment is gratefully made by the Interdepartmental Committee of the cooperation and assistance rendered in this study by the National Association of Attorneys General and its presidents during the period of the study, C. William O'Neill of Ohio (1954-55), and John Ben Seaport of Texas (1955-56), by Herbert L. Wiltsee of the association's secretariat, and by the association's members, the attorneys general of the several States, who have very generously contributed information and advice in connection with the study in accordance with the following resolution of the association:

Whereas the matter of legislative jurisdiction over Federal areas within the States has become the subject of extensive examination by an interdepartmental committee within the executive branch of the Federal establishment, by order of the President of the United States; and

Whereas this matter is of interest to the several States, within whose borders an aggregate of more than 20 percent of the total land area is now owned by the Federal Government, and the effects of this ownership have resulted in an extremely diverse pattern of jurisdictional status and attendant questions as to the respective Federal and State governmental responsibilities; and

Whereas this interdepartmental committee, under the chairmanship of United States Assistant Attorney General Perry W. Morton, and with the approval of the executive committee of this association, has requested the attorneys general of the several States to cooperate in the assembling of pertinent information and legal research; now therefore be it

Resolved by the 49th annual meeting of the National Association of Attorneys General that this association expresses its interest in the survey thus being undertake, and the association urges all of its members to cooperate as completely and expeditiously as possible in providing the interdepartmental committee with needed information; and be it further

Resolved, That the interdepartmental committee is requested to discuss its findings with the several attorneys general with the view to obtaining as wide concurrence as possible in the preliminary and final conclusions which may be reported by the committee.

- September 1955

IX

STATE ATTORNEYS GENERAL

John M. Patterson, Alabama
Robert Morrison, Arizona
T.J. Gentry, Arkansas
Edmund G. Brown, California
Duke W. Dunbar, Colorado
John J. Bracken, Connecticut
Joseph Donald Craven, Delaware
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John G. Fox, West Virginia
Vernon W. Thomson, Wisconsin
George F. Guy, Wyoming

The Interdepartmental Committee also wishes to acknowledge assistance contributed by the Council of State Governments, and by Charles F. Conlon, Executive Secretary of the National Association of Tax Administrators.

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[1] An analysis of State constitutional provisions and statutes in table form, together with notes which give more detailed explanations, has been prepared, and these are included on pp. 28-32 of part I of the Committee report.

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Texts of principal State and Federal constitutional provisions and statutes related to jurisdiction in effect as of December 31, 1955-- Continued

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Continued

JURISDICTION OVER FEDERAL AREAS WITHIN

THE STATES

CHAPTER I

OUTLINE OF STUDY

The instant study was occasioned by the denial to a group of children of Federal employees residing on the grounds of a Veterans' Administration hospital of the opportunity of attending public schools in the town in which the hospital was located. An administrative decision against the children was affirmed by local courts, finally including the supreme court of the State. The decisions were based on the ground that residents of the area on which the hospital was located were not residents of the State since "exclusive legislative jurisdiction" over such area had been ceded by the State to the Federal Government, and therefore they were not entitled to privileges of State residency.

In an ensuing study of the State supreme court decision with a view toward applying to the Supreme Court of the United States for a writ of certiorari, the Department of Justice ascertained that State laws and practices relating to the subject of Federal legislative jurisdiction are very different in different States, that practices of Federal agencies with respect to the same subject very extremely from agency to agency without apparent basis, and that the Federal Government, the States, residents of Federal areas, and others, are all suffering serious disabilities and disadvantages because of a general lack of knowledge or understanding of the subject of Federal legislative jurisdiction and its consequences.

Article I, section 8, clause 17, of the Constitution of the United States, the text of which is set out in appendix B to this report, provides in legal effect that the Federal Government shall have exclusive legislative jurisdiction over such area not exceeding 10 miles square as may become the seat of government of the United States, and like authority over all places acquired by the Government, with the consent of the State involved, for Federal works. It is the latter portion of this clause, the portion which has been emphasized, with which this report is primarily concerned.

The status of the District of Columbia, as the seat of government area referred to in the first part of the clause, is fairly well known. It is not nearly as well known that under the second part of the clause the Federal Government has acquired, to the exclusion of the states, jurisdiction such as it exercises with respect to the District of Columbia over several thousand areas scattered over the 48 States. Federal acquisition of legislative jurisdiction over such areas has made of them Federal islands within Stats, which the term "enclaves" is frequently used to describe.

While these enclaves, which are used for all the many Federal governmental purposes, such as post offices, arsenals, dams, roads, etc, usually are owned by the Government, the United States in many cases has received similar jurisdictional authority over privately owned properties which it leases, or privately owned and occupied properties which are located within the exterior boundaries of a large

area (such as the District of columbia and various national parks) as to which a State has ceded jurisdiction to the United States. On the other hand, the Federal Government has only a proprietorial interest, within vast areas of lands which it owns, for Federal proprietorship over land and Federal exercise of legislative jurisdiction with respect to land are not interdependent. And, as the Committee will endeavor to make clear, the extent of jurisdictional control which the government may have over land can and does vary to an almost infinite number of degrees between exclusive legislative jurisdiction and a proprietorial interest only.

The Federal Government is being required to furnish to areas within the States over which it has jurisdiction in various forms governmental services and facilities which its structure is not designed to supply efficiently or economically. The relationship between States and persons residing in Federal areas in those States is disarranged and disrupted, with tax losses, lack of police control, and other disadvantages to the States. Many residents of federally owned areas are deprived of numerous privileges and services, such as voting, and certain access to courts, which are the usual incidents of residence within a State. In short, it was found by the Department of Justice that this whole important field of Federal-State relations was in a confused and chaotic state, and that more was needed a thorough study of the entire subject of legislative jurisdiction with a view toward resolving as many as possible of the problems which lack of full knowledge and understanding of the subject had bred.

The Attorney general so recommended to the President and the Cabinet, and with their approval and support the instant study resulted. The preface to this report identifies the agencies, State and Federal, which most actively participated in the study; subsequent portions of the report set out in some detail the results of the study. The Committee desires to outline at this point, so as to furnish assistance for evaluation of its report, the manner in which the study was conducted, the manner in which the Committee's report is being presented, and some of the problems involved.

The land area of the United States is 1,903,824,640 acres. It was ascertained from available sources that of this area the Federal Government, as of a recent date, owned 405,088,566 acres, or more than 21 percent of the continental United States. It owns more than 87 percent of the land in the State of Nevada, over 50 percent of the land in several other States, and considerable land in every State of the Union. The Department of the Interior controls lands having a total area greater than that of all the six New England State and Texas combined. The Department of Agriculture control more than three fourths as much land as the Department of the Interior. Altogether 23 agencies of the Federal Government control property owned by the United States outside of the District of Columbia. Any survey relating to these lands is therefore bound to constitute a considerable project.

The Committee formulated a plan of study, of which portions requiring such approval were approved by the Bureau of the Budget under the Federal Reports Act of 1942 (B. B. No. 43-5501). This plan involved the assignment to a number of Federal agencies of various tasks which they were especially fitted to perform or as to which they had accumulated information; the circularization to all agencies of the Government which acquire, occupy, or operate real property of a questionnaire (questionnaire A) designed to elicit general

information, concerning the numbers, areas, uses and jurisdictional statuses of their properties and the practices, problems, policies, and recommendations related to jurisdictional status which the agencies might have; and the forwarding of an additional questionnaire (questionnaire B) for each individual Federal installation in three States (Virginia, Kansas, and California, selected as containing properties which would illustrate jurisdictional problems arising throughout the United States) which called for detailed information of the same character as that requested by the general questionnaire addressed to agencies. Federal agencies also were asked to submit a synopsis of all opinions of their chief law officers concerning matters affected by legislative jurisdiction.

Pursuant to further provisions of the plan of study the attorney general of each State was requested, through the National Association of Attorneys General, to furnish to the Committee a synopsis and citation of each State constitutional provision, statute, judicial decision, and attorney general opinion, concerning the acquisition of legislative jurisdiction by the United States over lands within the State; a statement of major problems experienced by State or local authorities arising out of legislative jurisdiction; an indication of privileges or services barred by State constitution or statutes to areas under United States legislative jurisdiction or residents of such areas, and any further comment concerning the subject which any attorney general might have.

A tremendous mass of information has been accumulated by the committee in the carrying out of the mentioned portions of the plan of study. Material submitted by the 23 Federal agencies which control federally owned land was refined by the Committee staff into memoranda which, in the case of the 18 larger agencies, were made available to each agency concerned for comment. The basic material involved, as well as the staff memoranda and agency comment thereon, was utilized by the committee as was necessary in its study.

The results of the Committee's study are reflected in the succeeding pages of this report, in the two appendixes to the report, and in a second report (Pt.II) which is under preparation.

The instant report (Pt.I) sets out the facts adduced by the Committee and recommendations of the Committee with respect thereto. In this portion of its work the Committee has labored to avoid to the utmost extent possible any legalistic discussions. Citations to constitutional provisions, statutes, or court decisions are made only when it seems inescapably necessary to make them, and rarely is any law quoted in the body of the report. It is the hope of the Committee that this approach will make this report more useful than it otherwise might be to nonlawyer officials, Federal and State, who have occasion to deal with problems arising from ownership, possession or control of land in the States by the Federal Government.

Appendix A to this report summarizes the basic factual information received from individual Federal agencies in connection with this study and sets out briefly the views of the agencies as to the legislative jurisdictional requirements of properties under their control. It is on this information received in reply to questionnaires A and B, already referred to, that the Committee has largely based its determinations as to the jurisdictional requirements of Federal agencies.

Appendix B contains the texts of all constitutional provisions and

major statutes of general effect, Federal and States, directly affecting

legislative jurisdiction, as such provisions and statutes were in effect on December 31, 1955, with explanatory material relating thereto. The contents of this appendix were necessarily developed for analytical purposes during the course of the study and are included with the report as a logical supplement and as of particular value to lawyers and legislators for independent analysis.

The second report of the Committee (Pt.II) will be a legal text on the subject of legislative jurisdiction. It will include consideration of salient Federal and States constitutional provisions, statutes, and court decisions, and opinions of major importance of principal Federal and State law officers, which have come to the attention of the Committee in the courses of the exhaustive study it has endeavored to make of this subject.

There has been assimilated into the Committee's reports all the legal learning in the legislative jurisdiction field of the members of the Committee and of their predecessor chief law officers, as the Committee has interpreted this learning from opinions rendered by these officers. To this has been added consideration of legal opinions of other chief law officers of the Federal Government, including the Attorney General and the Comptroller General, and of attorneys general of the several States, of court decisions in some 1,000 Federal and state cases, of matter in innumerable textbooks and legal periodicals, and of all manner of factual and legal information related to legislative jurisdiction submitted by 33 agencies of the Federal Government.

The Committee notes that there has never before been conducted a study of the subject of legislative jurisdiction approaching in comprehensiveness the survey of the facts and the law which has been made. While the Committee's reports cannot reflect every detail of the study, it is hoped that they will provide a basis for resolving most of the problems arising out of legislative jurisdiction situations.

CHAPTER II

HISTORY AND DEVELOPMENT OF FEDERAL LEGISLATIVE JURISDICTION

Origin of article I, section 8, clause 17, of the Constitution.--This provision was included in the Constitution as the result of proposals made to the Constitutional convention on May 29 and August 18, 1787, by Charles Pinckney and James Madison. The clause was born because of the vivid recollection of the members of the Convention of harassment suffered by the Continental Congress at Philadelphia, in 1783, at the hands of a mob of soldiers and ex-soldiers whom the Pennsylvania authorities felt unable to restrain, and whose activities forced the Congress to move its meeting place to Princeton, N.J. The delegates to the constitutional convention, many of whom had suffered indignities at the hands of this mob as members of the Continental Congress, were impressed by this incident, and by a general requirement for protection of the affairs of the then weak Federal Government from undue influence by the stronger States, to provide for

an area independent of any State, and under federal jurisdiction, in which the Federal Government would function. Without much debate there was accepted the their that places other than the seat of government which were held by the Federal Government for the benefit of all the States similarly should not be under the jurisdiction of any single State.

Objections made by Patrick Henry and others, based upon the dangers to personal rights and liberties which clause 17 presented, were anticipated or replied to by James Iredell of North Carolina (subsequently a United States Supreme court Justice) and Mr. Madison. They assured that the rights of residents of federalized areas would by protected by appropriate reservations made by the States in granting their respective consents to federalization. (It may be noted that this assurance has to this time borne only little fruit.)

Early practice concerning acquisition of legislative jurisdiction.--The Federal City was established at what became Washington on land ceded to the Federal Government for this purpose by the States of Maryland and Virginia under the first portion of clause 17. However, the provision of the second portion, for transfer of like jurisdiction to the Federal Government over other areas acquired for Federal purposes, was not uniformly exercised during the first 50 years of the existence of the United states. It was exercised with respect to most, but not all, lighthouse sites, with respect to various forts and

arsenals, and with respect to a number of other individual properties. But search of appropriate records indicates that during this period it was often the practice of the Government merely to purchase the lands upon which its installations were to be placed and to enter into occupancy for the purposes intended, without also acquiring legislative jurisdiction over the lands.

Acquisition of exclusive jurisdiction made compulsory.--The Federal practice of not acquiring legislative jurisdiction in many cases was terminated in 1841, as a result of what appears to have been a legislative accident. A controversy had developed between the Federal Government and the State of New York concerning the title to (not the legislative jurisdiction over) a single area of land on Staten Island upon which a fortification had been maintained for many years at Federal expense. Presumably to avoid a repetition of such incidents, the Congress provided by a joint resolution of September 11, 1841 (set out in appendix B to this report as sec. 355 of the Revised Statutes of the United States), that thereafter no public money could be expended for public buildings [public works] on land purchased by the United States until the Attorney General had approved title to the land, and until the legislature of the State in which the land was situated had consented to the purchase.

In facilitating Federal construction within their boundaries most States during the ensuing years enacted statutes consenting to the acquisition of land (frequently any land) within their boundaries by the Federal Government. These general consent statutes had the effect of implementing clause 17 and thereby vesting in the United States exclusive legislative jurisdiction over all lands acquired by it in the States. The only exceptions were cases where the Federal Government plainly indicated, by legislation or by action of the executive agency concerned, that the jurisdiction proffered by the State consent statute was not accepted. Necessity for plain

indication by the Federal Government of nonacceptance of jurisdiction came about because of a general theory in law that a proffered benefit is accepted unless its nonacceptance is demonstrated.

It should be noted that lands already under the proprietorship of the United States when these general consent statutes were enacted, such as the lands of the so-called public domain, were not affected by the statutes, and legislative jurisdiction with respect to them remained in the several States. Curiously, therefore, the vast areas of land which constitute the Federal public domain generally are held by the United States in a proprietorial statute only. It should also be noted that the 1841 Federal statute did not apply to lands acquired by the United States upon which there was no intent to erect public build-

ings within the broad meaning of the statute. However, the Federal Government quite completely divested the States, with their consent, of legislative jurisdiction over numerous and large areas of land which it acquired during the hundred year period following 1841 without, apparently, much concern being generated in any quarter for the consequences.

State inroads upon acquisition of exclusive jurisdiction.--In the course of the tremendous expansion of Federal land acquisition programs which occurred in the 1930's the States became increasingly aware of the impact upon State and local treasuries (which will be discussed in considerable detail) of Federal acquisition of exclusive legislative jurisdiction and its further impact on normal State and local authority. With the development of this awareness there began the development of a tendency on the part of States to repeal their general consent statutes and in some cases to substitute for them what may be termed "cession statutes," specifically ceding some measure of legislative jurisdiction to the United States while frequently reserving certain authority to the State. In other instances States amended their consent statutes so that such states similarly reserved certain authority to the State. Included among the reservations in such consent and cession statutes are the right to levy various taxes on persons and property situated on Federal lands and on transactions occurring on such lands; criminal jurisdiction over acts and omissions occurring on such lands; certain regulatory jurisdiction over various affairs on such lands such as licensing rights, control of public utility rates, and control over fishing and hunting; and the most complete type of reservation--a retention by the State of all its jurisdiction, to the Federal Government.

It should be emphasized that Federal instrumentalities and their property are not in any event subject to State or local taxation or to most types of State or local controls. However, the transfer to the United States of exclusive legislative jurisdiction over an area has the effect, speaking generally, of divesting the State and any governmental entities operating under its authority of any right to tax or control private persons or property upon the area. It was the divesting of such rights that reservations in consent and cession statutes were designed to combat.

Statutory enactments of various States have also fixed conditions concerning procedural aspects of Federal acceptance of legislative jurisdiction. For example, some States require publication of intent to accept and recordation with county clerks of metes and bounds of property, or have other similar requirements. In the case of one

State these procedural requirements have been deemed by some federal agencies to be so onerous, and the reservations of jurisdiction made by the State to be so broad, that the agencies have not felt justified in meeting the procedural requirements in view of the small amount of jurisdiction which is thereby acquired.

Retrocession by the Federal Government.--The States could not by unilateral action retrieve from the Federal Government authority which they had surrendered over areas as to which they had already ceded exclusive legislative jurisdiction to the Government, but during the mentioned period when States were altering their consent statutes the Federal Government relinquished to the States the authority to tax sales of motor vehicle fuels, to impose sales and use taxes, and to levy income taxes. These relinquishments, or retrocession, were applicable to areas as to which jurisdiction previously had been acquired as well as to future acquisitions. The term "retrocede" is used generally here and throughout this report to include waivers of immunity as well as retrocession of jurisdiction. The statutes involved are set out in appendix B in the codified form in which they appear in title 4 of the United States Code.

Exclusive jurisdiction requirement terminated.--There was also enacted, on February 1, 1940, an amendment to section 355 of the Revised Statues of the United States which eliminated the requirement for State consent to any Federal acquisition of land as a condition precedent to expenditure of Federal funds for construction on such land. The amendment substituted for the previous requirement provided that (1) the obtaining of exclusive jurisdiction in the United States over lands which it acquired was not to be required, (2) the head of a Government agency could file with the governor or other appropriate officer of the State involved a notice of the acceptance of such extent of jurisdiction as he deemed desirable as to any land under his custody, and (3) until such a notice was filed it should be conclusively presumed that no jurisdiction had been accepted by the United States. This amendment ended the 100-year period during which nearly all the land acquired by the United States came under the exclusive legislative jurisdiction of the Federal Government.

Subsequent developments.--Federal abandonment, through the revision of Revised Statute 355, of the nearly absolute requirement for State consent to federal land acquisition had two direct effects: (1) the state tendency to amendment of consent and cession laws so as to provide various reservations was accelerated, and (2) Federal administrators, particularly of newer agencies which did not have long-established habits of acquiring exclusive legislative jurisdiction, tended not to acquire any legislative jurisdiction for their lands. The first

tendency has developed to the point that, it may be seen from appendix B to this report, as of a recent date only 25 States, many of these having relatively little Federal property within their boundaries, still proffered exclusive legislative jurisdiction to the Federal Government by a general consent or cession statute. The other tendency has been sufficiently manifested that, it will be noted from more specific information offered later in this report, a very large

proportion of federal properties is now held with less than exclusive jurisdiction in the United States.

The tendencies described have not had any substantial effect on the bulk of properties as to which jurisdiction was acquired by the United States prior to 1949. Property acquired by the Federal Government with a vesting of legislative jurisdiction continues to this time in the same general jurisdictional status as originally attached. An exception occurs in those cases in which there is a limitation on the exercise of legislative jurisdiction by the United States specifically or by implication set out in the State statute under which the Federal Government procured such jurisdiction (such as a limitation that the proffered jurisdiction shall continue in the United States only so long as the United States continues to own a property, or so long as the property is used for a specified purpose). Once legislative jurisdiction has vested in the United states it cannot be retested in the State, other than by operation of a limitation, except by or under an act of Congress.

The Congress has acted, mainly, only to authorize imposition of the specific State taxes already mentioned, to permit States to apply and enforce their unemployment compensation and workmen's compensation laws in Federal areas, and to retrocede to the States jurisdiction over a mere handful of properties (in the last category the usual case involves only a retrocession of concurrent criminal jurisdiction with respect to a public highway traversing a Government reservation). The Congress has also authorized the Attorney General and the Administrator of Veterans' Affairs, respectively, to retrocede jurisdiction in certain limited instances, but this authority appears to have been rarely used; and the Congress has extended to the State jurisdiction over criminal offenses occurring on immigrant stations. Whether the Congress has authorized imposition of State and local taxes on private interests in all military housing constructed under the so-called Wherry Act, some of which is located on areas as to which the United States has received legislative jurisdiction, is a question now before the Supreme Court of the United States. All the statutes involved are, as has already been indicated, set out in appendix B to this report.

CHAPTER III

DEFINITIONS--CATEGORIES OF LEGISLATIVE JURISDICTION

Exclusive legislative jurisdiction.--The term "exclusive legislative jurisdiction" as used in this report refers to the power "to exercise exclusive legislation" granted to the Congress by article I, section 8, clause 17, of the Constitution, and to the like power which may be acquired by the United States through cession by a State, or by a reservation made by the United States through cession by a State, or by a reservation made by the United States in connection with the admission of a State into the Union. In the exercise of such power as to an area in a State the Federal Government theoretically displaces the State in which the area is contained of all its sovereign authority, executive and judicial as well as legislative. By State and Federal statutes and judicial decisions, however, it is accepted that a reservation by a State of only the right to serve criminal and civil process in an area, resulting from activities which occurred off the area, is not inconsistent with exclusive legislative jurisdiction.

The existence of Federal retrocession statutes has had the effect

of eliminating any possibility of the possession by the Federal Government at this time of full exclusive legislative jurisdiction, since all States may exercise jurisdiction in consonance with such statutes notwithstanding that they cede exclusive legislative jurisdiction. However, in view of a widespread use of the term "exclusive legislative jurisdiction" in this manner, the Committee for purposes of the instant study has applied the term to the situation wherein the Federal Government possess, by whichever method acquired, all the authority of the State, and in which the State concerned has not reserved to itself the right exercise any authority concurrently with the United States except the right to serve civil or criminal process in the area.

Because reservations made by the States in granting jurisdiction to the Federal Government have varied so greatly, and in order to describe situations in which the government has received or accepted no legislative jurisdiction over property which it owns, the Committee has found it desirable to adopt three other terms which are in general use in reference to jurisdictional status, and in an effort at precision has defined these terms. While these definitions are based on judicial decisions and similar authorities, and on usage in Government agencies, it is desired to emphasize that they are made here only for the purposes

of this study, and that they are not purported as absolute criteria for interpreting legislation or judicial decisions, or for other purposes. By way of example the Assimilative Crimes Act, referred to at several points in this report, which by its terms is applicable to areas under exclusive or concurrent jurisdiction, in the usual case is applicable in areas here defined as under partial jurisdiction.

Concurrent legislative jurisdiction.--This term is applied in those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over areas the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

Partial legislative jurisdiction.--This term is applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State's authority, but when the State concerned has reserved to itself the right to exercise, by itself or concurrently with United States, other authority constituting more than merely the right to serve civil or criminal process in the area (e.g., the right to tax private property).

Proprietorial interest only.--This term is applied to those instances wherein the Federal Government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area. In applying this definition recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landholders with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietary capacity.

CHAPTER IV

BASIC CHARACTERISTICS OF THE SEVERAL CATEGORIES OF LEGISLATIVE JURISDICTION

Effects of varying statutes.--To each of the four categories of legislative jurisdictional situations (in which the United States has (a) exclusive, (b) concurrent, (c) or partial legislative jurisdiction, or (d) a proprietorial interest only) differing legal characteristics attach. These differences result in various advantages, various disadvantages, and many problems arising for the Federal Government, for State and local governments and for individuals, out of each of the several types of legislative jurisdiction. Specific advantages, disadvantages, and problems will be discussed in succeeding portions of this report. Knowledge of the basic incidents of the several categories of legislative jurisdiction is essential, however, to the identification and appraisal of these matters.

Exclusive legislative jurisdiction.--When the Federal Government receives exclusive legislative jurisdiction over an area, the jurisdiction of the State and of any local governments (which of course derive their authority from the State) is ousted, subject only to the right to serve process and to t several concessions made by the Federal Government which have already been mentioned. Thereafter only Congress has authority to legislate for the area. However, while Congress has legislated for the District of columbia, it has not legislated for other areas under its exclusive legislative jurisdiction except in a few particulars which will be indicated hereinafter.

The courts have filled the vacuum which might otherwise have occurred by adopting for such areas a rule of international law whereby as to ceded territory the laws of the displaced sovereign which are in effect at the time of cession and which are not in conflict with laws or policies of the new sovereign remain in effect as laws of such new sovereign until specifically displaced. Under the international law rule it is anticipated that the new sovereign will act to keep the laws of the ceded territory up to date, for any enactments or amendments by the old sovereign have not effect in territory which has been ceded. In view of the fact that Congress has not acted except as will be stated to amend or otherwise maintain the laws in areas other than the District of Columbia which are under its exclusive legislative jurisdiction, the laws generally in effect in each such area

are the former State laws which were in effect there as of the time, be it 20 or 120 years ago, when jurisdiction over the area passed to the United States. It can be seen that since laws of every State have been developing and changing throughout the years, the laws applicable in Federal exclusive jurisdiction areas in the same State vary according to the time at which jurisdiction there over passed to the United States. It can also be seen that since the laws applicable in

these areas have not developed or changed during the period of Federal exercise of jurisdiction in the areas, such laws are in most cases, obsolete, and in many cases archaic. This condition adversely affects nearly all who may be involved, with the effects most likely to be felt by persons residing or doing business on the area and those who deal with such persons.

In certain instances, even within a single area under exclusive Federal jurisdiction, an engineering survey may be necessary to determine exactly where an act giving rise to a legal effect occurred, in order to ascertain which of several successive state laws, all archaic, is applicable. This necessity develops from the fact that ordinarily consent and cession statutes have not transferred jurisdiction to the United States until it has acquired title, a process that, at least with respect to larger reservations, has lasted several years and often has resulted in the applicability under the international law rule of different State laws to different tracts of land within the same reservation. This was particularly the case before the enactment of legislation. permitting the United States to acquire title upon the filing of a condemnation suit, rather than at the termination of such often protracted litigation.

In other cases, amendments to State consent and cession statutes during the process of land acquisition have resulted in the United States' exercising different quanta of legislative jurisdiction in the same Federal reservation. These areas of different legislative jurisdiction are often so random and haphazard that only litigation, again dependent upon an engineering survey, can determine even what court has jurisdiction, without regard to questions of substantive law.

In addition, although a body of substantive law is carried over for areas over which the Federal Government assumes exclusive legislative jurisdiction, the agencies and administrative procedures which often are necessary to the functioning of the substantive law are not made available by the Federal Government. For example, while a marriage law is carried over, there is no licensing and recordkeeping office; and while there are public health and safety laws, there rarely are available the necessary Federal facilities for administering and enforcing these laws.

In order to avoid the probably insurmountable task of enacting and maintaining a code of criminal laws appropriate for all the areas under its legislative jurisdiction, the Congress has passed the so called Assimilative Crimes Act (18 U.S.C. 13), set out in appendix B. In this statute the congress has provided in legal effect, that all acts or omissions occurring on an area under its legislative jurisdiction which would constitute a crime if the area continued under State jurisdiction are to constitute a crime if the area continued under State jurisdiction are to constitute a similar crime, similarly punishable, under Federal law. The assimilative Crimes Act does not apply to make Federal crimes based on State statutes which are contrary to Federal policy. Unlike the court-adopted rule of international law, the Assimilative Crimes Act provides that the State laws applicable shall be those in force "at the time of such act or omission." The criminal laws in areas over which the Congress has legislative jurisdiction as to crimes are thus as up to date as those of the surrounding State.

Law enforcement must, of course, be supplied by the Federal Government since, the State law being inapplicable within the

enclave, local policemen and other law-enforcement agencies do not have authority nor do the State courts have criminal jurisdiction over offenses committed within the reservation. However, Federal law enforcement facilities are distant from many Federal areas, and the machinery of the Federal court system is not designed to handle efficiently or with reasonable convenience to the public or to the Federal Government the administration of what are essentially local ordinances.

Federal areas of exclusive jurisdiction are considered in many respects to comprise legal entities separate from the surrounding State, and, indeed, until a recent decision the United States Supreme Court dispelled the notion, were viewed as completely sovereign areas (under the sovereignty of the United States), geographically surrounded by another sovereign. As a result there is not obligation on the State or on any local political subdivision to provide for such areas normal governmental services such as disposal of sewage, removal of trash and garbage, snow clearance, road maintenance, fire protection and the like.

Persons and property on exclusive jurisdiction areas are not subject to State or local taxation except as Congress has permitted (income, sales, use, motor vehicle fuel, and unemployment and workmen's compensation taxes only have been permitted). It should be noted that the Federal Government and its instrumentalities are not subject to direct taxation by States or local taxing authorities regardless of the legislative jurisdiction status of the area on which they may be operating. However, the immunity from State authority of exclusive jurisdiction areas has the additional effect of barring State

all times, under this jurisdictional status as under all others, the Federal government has the superior right under the supremacy clause of the Constitution to carry out Federal functions unimpeded by State interference.

State law, including any amendments which may be made by the State from time to time, is applicable in a concurrent jurisdiction area. Thus there is absent the tendency which exists in exclusive jurisdiction areas for general laws to become obsolete. Federal law appertaining generally to areas under the legislative jurisdiction of the United States also applies. State or local agencies and administrative processes needed to carry out various State laws, such as laws relating to notaries, various licensing boards, etc., can be made available by the State or local government in accordance with normal procedures. State criminal laws are, course, applicable in the area for enforcement by the State. The same laws apply for enforcement by the Federal Government under the Assimilative Crimes Act, which by its terms is applicable to areas under the concurrent as well as the exclusive legislative jurisdiction of the United States, and other Federal criminal laws also apply. Most crimes fall under both Federal and State sanction, and either the Federal or State Government, or both, may take jurisdiction over a given offense.

Unlike the situation in exclusive jurisdiction areas, the State and the local governmental subdivisions have the same obligation to furnish their normal governmental services, such as sewage disposal, to and in the area, as they have elsewhere in the state. They also have the compensating right of imposing taxes on persons, property, and activities in the area (but not, of course, directly on the Federal Government or its instrumentalities). The regulatory powers

of the States may be exercised in the area but, again, not directly on the Federal Government or its instrumentalities, and not so as to interfere with Government activities. Most significant in many cases, residency in a concurrent jurisdiction area, as distinguish from residency in an exclusive jurisdiction area, in every sense and to the same extent qualifies a person as a resident of a State as residency in any other part of the State, so that none of the problems relating to personal rights and privileges that may arise in an exclusive jurisdiction area are raised in a concurrent jurisdiction area.

Partial legislative jurisdiction.--This jurisdictional status occurs where the State grants to the Federal Government the authority to exercise certain State powers within an area but reserves for exercise only by itself, or by itself as well as the Federal Government, other powers constituting more than merely the right to serve civil or criminal process.

As to those State powers granted by the State to the Federal Government without reservation, administration of the Federal area is the same as if it were under exclusively Federal legislative jurisdiction, and the powers which were relinquished by the State may be exercised only by the Federal Government. As to the powers reserved by the State for exercise only by itself, administration of the area is as though the United States had no jurisdiction whatever (i. e., proprietorial interest only); the reserved powers may not be exercised by the federal government, but continue to be exercised by the State. As to those powers granted by the State to the Federal Government with a reservation by the State of authority to exercise the same powers concurrently, administration of the area is as though it were under the concurrent legislation jurisdiction status described above; only the powers specified for concurrent exercise can, of course, be exercised by both the Federal and State Governments.

The reservations made by States which result in a partial legislative jurisdiction status relate usually to such matters as taxation of individuals on the area and their property and activities, but can and do relate to numerous combinations of the matters affected by legislative jurisdiction. Depending on which powers have been granted to the United States for exercise exclusively by it, various State laws may or may not be applicable. In any event (assuming no complete reservation to itself by the State of the right to make or enforce criminal laws) the Assimilative Crimes Act applies, allowing law enforcement by Federal officials. Depending also on which powers have been granted by the State, the relations of the residents of the area with the State are disturbed to a greater or lesser degree in the usual case. The exact incidents of this type of jurisdiction need to be determined in each case by a careful study of the applicable State cession or consent statute.

Proprietorial interest only.--Where the Federal Government has no legislative jurisdiction over its land, it holds such land in a proprietorial interest only and has the same rights in the land as does any other landowner. In addition, however, there exists a right of the Federal Government to perform the functions delegated to it by the Constitution without interference from any source. It may resist, by exercise of its legislative or executive authority or through proceedings in the court, according to the circumstances, any attempted interference by a State instrumentality as well as by individuals. Also, the Congress has special authority, vested in it by article IV, section 3, clause 2, of the Constitution, to enact laws

for the protection of property belonging to the United States.

Subject to these conditions, in the case where the United States acquires only a proprietorial interest the State retains all the jurisdiction over the area which it would have if a private individual rather than the United States owned the land. However, for the reasons indicated the State may not impose its regulatory power directly upon the Federal Government nor may it tax the Federal land. Neither may the state regulate the actions of the residents of the land in any way which might directly interfere with the performance of a Federal function. State action may in some instances impose an indirect burden upon the Federal Government when it concerns areas held in a proprietorial interest only, as in the Penn Dairies case, supra. Any persons residing on the land remain residents of the State with all the rights, privileges, and obligations which attach to such residence.

CHAPTER V

LAWS AND PROBLEMS OF STATES RELATED TO LEGISLATIVE JURISDICTION

Use of material from State sources.--The great bulk of the material received by the committee from State attorney general and other State sources consists of excerpts appertaining to legislative jurisdiction from the constitutions and statutes of the States. This particular material, conformed to reflect the status of the law as of December 31, 1955, will be found in appendix B to this report arranged alphabetically by States. The judicial decisions and legal opinions which the attorneys general directed to the attention of the committee, which were invaluable in forming apart of the basis for the views of the Committee set out in this report, in the main will be specifically referred to only in part II of the report, which constitutes a text of the law on the subject of legislative jurisdiction. Certain aspects of the material relating to State appear appropriate for discussion at this point, however.

Provisions of State constitutions and statutes relating to jurisdiction.--It is noted by the Committee that the constitutions on Montana, North Dakota, and South Dakota have ceded to the United States exclusive legislative jurisdiction over certain specified areas, so that amendments to the constitutions might be required in effecting changes of the jurisdictional status of the areas involved. The constitution of the State of Washington gives the consent of the States over tracts of land held or reserved for the purposes of article I, section 8, clause 17, of the United States Constitution, so that no limitation apparently may be placed by the State legislature on the exercise by the United States of exclusive jurisdiction over such areas within the State. While three other States (California, Georgia, Texas) also have constitutional provisions which bear some relation to legislative jurisdiction, such relation is indirect and relatively insignificant.

The Committee's study indicates that as recently as 25 years ago all States had in effect consent or cession statutes of more or less

general application which permitted the vesting in the United States of exclusive legislative jurisdiction, or substantially exclusive legislative jurisdiction, over properties acquired by it within the State. As of

December 31, 1955, only 25 States (identified in the table presented at the end of this chapter) continued to have such statutes. In addition, exclusive (or lesser) jurisdiction may be ceded in Virginia by action of the Governor and attorney general, and in Florida and Alabama by their respective Governors. Three States, Illinois, Kentucky, and Tennessee, have wholly repealed their consent and cession statutes. Pennsylvania consents to the Federal acquisition of property (and therefore exclusive legislative jurisdiction over such property) necessary for the erection of aids to navigation, but not for other purposes of the government. The other States have consent and cession statutes containing various limitations and reservations. All States which have such statutes reserve authority for the service of process upon areas the jurisdiction over which is transferred based on events which occurred off the areas. The table which appears at the end of this chapter, together with its notes, gives certain information concerning the provisions made in State constitutions and statutes with respect to legislative jurisdiction. For more detailed information it is suggested that reference be had to appendix B to this report.

Expressions by State attorneys general respecting Federal exercise of jurisdiction.--The attitude of the attorney general of Kentucky with respect to the exercise by the Federal government of exclusive legislative jurisdiction over areas within his State, which was particularly well expressed, perhaps reflects views of other State officials and reasons why the States have tended in recent years to limit the availability to the United States of legislative jurisdiction:

In commenting generally, we feel that the existence of any Federal enclaves in this State has probably been conductive to embarrassment to both the Federal and the State authorities. We have noted in our dealings with the Atomic Energy Commission at Paducah, whose installation there is partially within a Federal enclave and partially without, that this most secret of all federal activities an be carried on most successfully within the State jurisdiction, and the atomic Energy Commission officials width whom we have dealt have so expressed themselves. The transfer of jurisdiction to the Federal Government is as anachronism which has survived from the period of our history when Federal powers were so strictly limited that care had to be taken to protect the Federal Government from encroachment by officials of the all-powerful States. Needless to say, this condition is now exactly reversed. If there is any activity which the Federal Government cannot undertake on its own property without the cession of jurisdiction, we are unaware of it.

It is our hope that your Committee will be able to recommend a retrocession to Kentucky of all of the Federal enclaves in this State, so that our local governments, our law courts, our administrative agencies and our Federal officials themselves may cease to be vexed with this annoying and useless anachronism.

Another view, which is, nevertheless, critical of practices of Federal agencies with respect to the acquisition of legislative jurisdiction, is also well stated by the attorney general of New York:

It would seem that it would result in a change for the better if acquisition by the United States of jurisdiction over areas in this State were limited to those cases in which such acquisition is absolutely necessary to the accomplishment of the Federal purposes for which the lands have been or are acquired and to which they are devoted, and that the jurisdiction heretofore acquired by the United States should be returned to the State in all cases where its retention by the United States in not absolutely required.

It is difficult to see, for instance, how the advantages,if any, outweigh the disadvantages of acquisition by the United States of exclusive jurisdiction over sites within the State acquired for the purposes of post offices, office buildings, courthouses, lighthouses, veterans' hospitals, and the like. In the absence of exclusive Federal jurisdiction,such places and the inhabitants thereof would by subject to and would receive the protection and benefits of State and local laws except insofar as the operation of such laws might adversely affect the United Stats in the use of the property for the purposes for which it is maintained (Surplus Trading Co. v. Cook, 281 U.S. 647, 650).

A good beginning was made by the act of Congress of February 1, 1940 (54 Stat. 19; 40 U.S.C.A. 255), sometimes C referred to as the act of October 9, 1940 (54 Stat. 1083). Adoption of that act followed the decisions of the Supreme Court in James v. Dravo Contracting Co., 302 U.S. 134; Mason Co. v.Tax Commission,302 U.S.186; and Collins v. Yosemite Park Co., 304 U.S. 518 (See Adams v. U.S., 319 U.S.312).

One of the underlying reasons for that act was a realization by Congress of the fact, adverted to by the Supreme Court at page 148 of its opinion in James v. Dravo Contracting Co., that "a transfer of legislative jurisdiction carries with it not only benefits but obligations, and it may be highly desirable, in the interests of both the National Government and of the State, that the latter should not be entirely ousted of its jurisdiction." But the benefits of that act will not be achieved in the measure hoped for unless administrative departments of the Federal government exercise a discriminating, self-imposed restraint in applying for and accepting cessions to the United states of exclusive jurisdiction over lands within the Stats.

Not all attorneys general were critical of the exercise of legislative jurisdiction, however. The general of Maine and Florida, for example, indicated that their problems arising out of legislative jurisdiction were minor. Nevertheless, in each instance the existence of such problems was acknowledged.

Difficulty of determining jurisdictional status of Federal areas.--Perhaps the problems most often referred to by State attorneys general arose out of the difficulty of determining the jurisdictional status of federally owned areas, where the task was to ascertain whether State laws, or which state law applied in an area. In Kansas and in Maryland, for example, there presently exist serious situations with respect to the indefinite jurisdictional status of important highways. The basic question involved in Kansas situa-

tion appears to be whether the Federal Government in 1875 received legislative jurisdiction over a federally owned highway adjoining Fort Leavenworth on which many problems of law enforcement now occur. The Maryland situation arises out of the fact that a large portion of the Baltimore-Washington Expressway, contained almost wholly within the territorial boundaries of the State of Maryland, passes through areas acquired at separate times, for separate purposes, and with differing legislative jurisdictional statuses, by the Federal Government. Since the United States has exclusive legislative jurisdiction over various of these areas the boundaries of which cannot easily be established there exists a Balkanized situation on the highway as a result of which Maryland law-enforcement authorities are finding it virtually impossible, particularly with respect to traffic violations, to establish jurisdiction over crimes committed on segments of the highway which actually are within their jurisdictional authority.

On the subject of what givers rise to the principal difficulties has by States with respect to areas under Federal jurisdiction the attorney general of Maryland states:

I would generally say that the most important item to be considered at the outset, insofar as the State of Maryland is concerned, is an exact inventory of each and every item of federally owned real estate, together with an ascertainment of the existing jurisdictional picture as to each such area. Once we have determined this, we will be in a far better position to assess what is necessary in the way of agreements between the Federal Government and the State and in clarifying legislation.

Taxing problems.--These are another apparently serious concern arising for State attorneys general and other State officials out of legislative jurisdictional situations. In the usual case the problem does not directly involve the United States or an instrumentality thereof, the immunities of which from State and local taxation are well known to responsible State officials. Rather, the problems arise from legal discriminations still existing with respect to areas under Federal exclusive legislative jurisdiction whereby residents of such areas, persons doing business in the areas, and privately owned property contained in the areas, must receive from State and local taxing authorities treatment different from that accorded to very similarly situated persons and property on areas as to which the United States does not have exclusive legislative jurisdiction. The situations obviously complicated by the fact that the imposition of certain taxes on private persons, activities, and properties in Federal exclusive legislative jurisdiction areas have been authorized by the Congress while others have not.

A frequently mentioned problem in the tax field was that arising with respect to so-called Wherry housing,which is housing constructed and operated by private persons for military personnel. This housing is usually located land leased from the Federal Government which is part of the side of a military installation, and which often is under the exclusive legislative jurisdiction of the United States. White the Congress has in certain specific terms authorized State and local taxation of private leasehold interests in such housing projects, many States and local taxing districts do not have tax laws applicable to leasehold interest, as distinguished from fee interests, and hence are having difficulty in collecting revenue from that interest which the Congress has made taxable. However, this particular problem does not arise out of legislative jurisdictional status. A related problem, as

to whether the Congress authorized the imposition of taxes on such lease hold interests where the housing is located on land under the exclusive jurisdiction of the United States is presently before the Supreme Court of the United States.

Other problems.--Numerous problems of criminal jurisdiction, licensing and control of alcoholic beverages, and licensing and control of persons engaged in occupations affecting public health and safety were mentioned by attorneys general as arising in areas under the legislative jurisdiction of the United States.

The attorneys general also made frequent references to problems existing for residents of exclusive jurisdiction areas and their children, particularly with respect to voting, divorce, old age assistance, admission to State institutions, and loss of rights to attendance at public schools.

Summary.--The information received by the Committee from State sources indicates that numerous problems for States and local governmental entities,and for persons residing in Federal areas within the States result from Federal legislative jurisdiction, and particularly exclusive legislative jurisdiction, over such areas, with a considerable disruption of the normal relations of State and other governmental entities with persons within their geographical boundaries.

CHAPTER VI

JURISDICTIONAL PREFERENCES OF FEDERAL AGENCIES

Basic grouping of jurisdictional preferences.--Federal agencies can be divided into three groups as to their views of their legislative jurisdictional needs. Those in the first group feel that their functions are carried on most effectively when the United States acquires exclusive legislative jurisdiction--or some shade of partial jurisdiction approaching exclusive--over the sites of some of the installations under their management; the second group consists of agencies which consider that only a proprietorial interest in the Federal Government, with legislative jurisdiction left in the States, best suits the requirement of their operations.

Agencies preferring exclusive or partial jurisdiction.--The group preferring exclusive or partial legislative jurisdiction includes the Veterans' Administration (which states that it desires exclusive jurisdiction, or at least concurrent jurisdiction, over all its installations except office buildings in urban areas, as to which a proprietorial interest only is deemed satisfactory), the National Park Service of the Department of the Interior (which desires to have partial jurisdiction over national parks and over national monuments of large land area), and the three military departments, the Department of the Army (which desires to procure or retain exclusive as well as other forms of legislative jurisdiction over various individual installation on an individually determined basis, except as to land dedicated to civil projects of the Corps of Engineers, for which only a proprietorial interest in the United States as may be necessary is deemed best suited), the Department of the Navy (which desires an exclusive or certain partial legislative jurisdiction for its major installations, on an individually determined basis), and the Department of the Air Force (which desires a partial legislative jurisdiction but which would find concurrent legislative jurisdiction acceptable under certain conditions). Also, the Bureau of the Census

and the Civil Aeronautics Administration of the Department of Commerce each consider that no less than an existing exclusive or partial legislative jurisdiction is best suited to one certain Federal property which each occupies.

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Agencies preferring concurrent jurisdiction.--The group preferring, in special situations, concurrent jurisdiction for certain of its properties consists of the General Services Administration (which finds a proprietorial interest sufficient for general purposes but, in the event of a failure to secure certain statutory changes hereinafter recommended, would desire concurrent jurisdiction for limited areas requiring special police services), the Department of Health, Education, and Welfare (which desires such jurisdiction for a small number of properties in special situations, but which considers a proprietorial interest generally satisfactory), the Department of the Navy (which desires such jurisdiction, but alternatively would not find only a proprietorial interest grossly objectionable, as to all properties other than the major properties for which it determined exclusive or partial legislative jurisdiction most desirable), the Bureau of Prisons of the Department of Justice (which desires concurrent legislative jurisdiction for its installations in which prisoners are maintained), the Bureau of Public Roads of the Department of Commerce (which desires concurrent jurisdiction for five installations), and the Department of the Interior (which consider that this status may be desirable for certain wildlife areas).

Agencies preferring a proprietorial interest only.--The last and largest group, which desires for its properties only a proprietorial interest in the United States, with legislative jurisdiction left in the States, includes all Federal agencies not mentioned in the two paragraphs above which occupy or supervise real property of the United States and, as to certain of their properties, several of the mentioned agencies. Among the major landholding agencies in this third group are the Department of Agriculture, the General Services Administration for all of its properties (except those as to which concurrent jurisdiction is required unless certain amendments to its authority to furnish special police services are enacted), the Tennessee Valley Authority (which reserved judgment as to whether one certain installation should be under an exclusive jurisdiction status for security reasons), the Atomic Energy Commission, the Department of the Treasury, the Housing and Home Finance Agency, the Department of Health, Education, and Welfare as to most of its properties, and the International Boundary and Water Commission. The Central Intelligence Agency and the Immigration and Naturalization Service of the Department of Justice hold relatively minor amounts of real property but it is interesting to note, in view of the security aspects of their operations, that they are also included in the group which desires only a proprietorial interest for their properties.

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Lands held in other than the preferred status.--One of the facts which early came to the attention of the Committee is that while many Federal agencies have more or less definite views as to what

legislative jurisdictional status is best suited for their lands in the light of the purposes to which the lands are put, they often hold large proportions of such lands indifferent status. The Central Intelligence Agency and the United States Information Agency are the only Federal agencies which hold all their properties solely in the status (proprietorial interest only) which they consider best for their purposes.

Where, as is usually the case, the lands are held with more jurisdiction in the United States than is considered best by the Federal agency concerned, the explanation often, and with most agencies, lies in the fact that jurisdiction was acquired prior to February 1, 1940, during the 100-year period when it was generally mandatory under Federal law (Rev. Stat. 355,see appendix B) that agencies procure the consent of the State to purchase of land (whereby the United State acquired exclusive legislative jurisdiction over such land by operation of art. I, sec. 8, clause 17, of the Constitution). In other instances the land was acquired by transfer from other agencies which preferred a status involving more jurisdiction in the United States than is desired by the agency presently utilizing the property. The latter is particularly true of the Atomic Energy Commission, the Department of Agriculture, and other agencies desiring little or no legislative jurisdiction, which now hold certain lands originally acquired by one of the military departments. In still other instances an agency has been required by old Federal statutes, or by newer legislation patterned on old statutes, to acquire a particular type of jurisdiction over land to be utilized for certain purposes. The last reason applies to national park areas under the supervision of the Department of the Interior, the jurisdictional status of which is fixed with few exceptions by statutes pertaining to individual such areas, which statutes for many years apparently have been patterned on similar preexisting laws.

Another basic cause of an excess of jurisdiction in the United States, and of some link of desired jurisdiction, is that with only three exceptions (Alabama, florida, and Virginia) the States in their general consent or cession statutes rigidly fix the quantum of jurisdiction available to the federal Government, which measure of jurisdiction is accepted by Federal agencies actually desiring a lesser measure in

order to avoid requirement for requesting special State legislation. In this connection in may that while Federal law (Rev. Stat. 355, as amended) currently grants authority to Federal administrators to acquire only such jurisdiction as they deem necessary, state laws with the three exceptions noted are not designed to permit any accommodation to differing Federal needs. A further basic cause of an excess of jurisdiction in the United States is the fact, already mentioned, that while Federal law gives authority (with minor exceptions) to Federal administrators to acquire jurisdiction, it does not (with similarly minor exceptions) give them like authority to dispose of jurisdiction once it is acquired.

Where, on the other hand, the lands of an agency are held with less jurisdiction in the United States than is considered best by the Federal agency concerned, the most frequent explanation would appear to be that the State law does not permit the acquisition of the type of legislative jurisdiction (or at least concurrent jurisdiction) in nearly all cases, has accepted no jurisdiction over its more recent acquisitions in California because of what it considers the onerous

procedural provisions of the California cession statute and the indefinite nature of the jurisdiction acquired once the procedures have been completed.

Lack of firm agency policy with respect to the quantum of jurisdiction which should be acquired for various types of agency installation is also responsible for many instances in which less jurisdiction than deemed desirable is had by an agency over various of its properties. The Navy, for example, has indicated that its practice has been to acquire legislative jurisdiction over its installations only after the local commander has submitted a justified request for such acquisition. The Committee has received information from several agencies, and the replies of several other agencies suggest the same fact, that until the present study had focused their attention to matters relating to jurisdiction, many Federal agencies had developed no policy in this field. This has been responsible for the acquisition of an excess of jurisdiction more often than of too little jurisdiction, but has been an apparently significant factor in each case. The Committee feels that if its work served no other purpose than has already been accomplished in simulating the agencies to a study of their own policies, practices and procedures with respect to acquisition of legislative jurisdiction it will have been worthwhile.

Difficulty of obtaining information concerning jurisdiction status. -- Another factor of considerable significance which has been brought to light by the work of the Committee has been the incompliance and inaccuracy of agency land records as to the jurisdictional

status of the lands held. In many cases the opinion expressed by an agency as to the type of jurisdiction that existed over a particular installation differed from that expressed by the local commander or manager of the installation. In still other cases no information or opinion whatever appeared to be readily available on the subject. Unfortunately, these situations are confined to no few agencies, but exist rather generally.

Six States (Alabama, California, Florida, New York, Texas, and Virginia) have requirements set out in their general consent or cession laws for the filing of information concerning jurisdictional status with the governor or secretary of state, or the city or county or court clerk or registrar with whom title records are required to be filed. To the extent that such State laws apply, information on the jurisdictional status of an area is available to all interested parties. Otherwise such information apparently may be unavailable except perhaps after considerable research by a person skilled in the law relating to this intricate subject, since jurisdictional status may in a given case depend on a special rather than a general State consent or cession statute, upon acceptance by a Federal administrator, and upon other factors.

CHAPTER VII

ANALYSIS OF FEDERAL AGENCY PREFERENCES

A. GENERAL

Determinations concerning jurisdictional needs.--One of the basic aims of the Committee is to assist Federal agencies, in the light of all the information gathered by the Committee, in determining the actual needs of their installations and activities with respect to legislative jurisdiction. The Committee desires to stress that while it has indicated, in some instances with considerable definiteness, the jurisdictional status which the properties of the several agencies should have, it is of course the individual agencies which have responsibility for their operations, and it is the agencies, not the Committee, which must make the final decision.

Every Federal agency having an interest in matters affected by legislative jurisdiction, and each Federal installation located on federally owned ground in the three sample State (Virginia, Kansas, and California) was specifically requested to indicate the jurisdictional status of its land, any jurisdictional status which the agency or installation supervisor might prefer, the advantages and disadvantages to Federal operations of the several types of jurisdictional status, and the problems which had been experienced out of any matter related to legislative jurisdiction. In addition, the Committee gained a considerable insight into the manifold problems arising out of varying jurisdictional statuses through the many hundreds of Federal and State judicial decisions, and legal opinions, memoranda, and letters on this subject prepared by Federal agency officials, State attorneys general, and others, which were brought to the attention of the Committee by the various cooperating agencies and officials.

B. VIEWS OF AGENCIES DESIRING EXCLUSIVE OR PARTIAL JURISDICTION

State interference with Federal functions.--The views of the Veterans' Administration, the National Park Service of the Department of the Interior, the Bureau of the Census and the Civil Aeronautics Administration of the Department of Commerce, and the three military departments, most nearly follow the traditional Federal policy, almost uniform prior to 19940, that the United States needs to acquire

exclusive legislative jurisdiction over the sites of its installations if it is to perform its constitutional functions effectively. The Army report, which is very similar in this respect to a Marine Corps report, has perhaps expressed the basic reasoning underlying this traditional Federal view most effectively in its discussion of the reason numerous local commanders have urged the acquisition of exclusive legislative jurisdiction. The Army report states:

This is understandable when it is considered that a post commander is charged with the administration, protection, security, safety , and care of the properties under his control, including, in a limited sense, the conduct and activities of the personnel within Such a commander should, of course, be free in the above respects with the least possible interference by State or local authorities.

Whether the carrying out of these responsibilities is substantially related to the jurisdictional status of the site of the installation will bear further examination.

Direct interference.--Freedom from interference in their operations by State and local authorities is, indeed, mentioned as a desirable factor by the Navy, Air Force and Veterans' Administration as well as the Army, and in the answers of numerous local managers or commanders of installations of these and various other agencies. While each of the agency answers to questionnaire A indicates that the reporting agency is fully aware of the constitutional immunity of Federal functions from any direct State interference, it would appear that there is an understandable lack of such knowledge on the part of some local commanders and managers. However, notwithstanding knowledge of immunities apart from those flowing from jurisdictional status, these agencies believe that exclusive jurisdiction aids them in securing freedom from State and local interference. As stated in the Navy report:

The principle that the Federal Government enjoys a constitutional immunity from interference by the States is clearly established. But the boundaries of that immunity are by no means well-established * * * If a State has concurrent jurisdiction over an installation and a conflict occurs as to the applicability of State law, an assertion of Federal immunity having been made, it is true that the issue may ultimately be resolved in favor of immunity, but the delay, expense and effort involved in establishing such immunity, are, in fact, almost as much an interference as would be actual control by the State.

Almost the identical thought has been expressed by the Veterans' Administration. That agency states:

Circumstances and exigencies do not always accommodate themselves to extended litigation to determine the fine line of demarcation between Federal and State jurisdictions.

Four basic reasons have been advanced by the Veterans' Administration for preferring exclusive legislative jurisdiction. These are that such a jurisdictional status obviates: (1) conformance to local building codes, (2) State or local interference in hospital operations as regards boiler plant operation, or sanitation, water, or sewage disposal arrangements, (3) confusion as to police authority, and (4) requirements for compliance with numerous and varied State and local licensing and inspection practices, such as any requirement with respect to State licensing of Administration physicians.

The question of compliance by the agency with various types of Stat and local statutes enacted under the police powers of the States, statutes designed for the protection of the health and safety of the public, apparently is the principal basis of the concern on the part

of the Veterans' Administration, and indeed is a matter on which concern was expressed by several other agencies. Among the types of statutes and regulations involved aside from those regulating matters mentioned by the Veterans' Administration, are health regulations, fire prevention regulations, elevator inspection codes, vehicle inspection laws, and others of a like nature. The immunity of Federal operations such as those conducted by the Veterans' Administration and each of the other agencies raising this question from State interference stems not from Federal jurisdiction over the land upon which the operations are conducted but is incident to the status of the operations as functions vested in the Federal Government by the Constitution. The Federal Government's constitutional immunity from direct State interference with the carrying out of Federal functions would appear to be clearly established. The Committee therefore views the acquisition of any measure of Federal jurisdiction unnecessary in order to secure freedom from any direct interference in this field.

The Veterans' Administration's concern (reason No. 3), that a jurisdictional status other than exclusive jurisdiction in the United States might lead to confusion as to police authority over the area, would not appear to find support in the cases of its reporting installation, none of which has reported any such confusion. It appears to be a fact, on the other hand, that in some instances local police presently are rendering service on Veterans' Administration installations under the exclusive jurisdiction of the United States, in cooperation with the managements of such installations, which services very likely involve extra-legal arrests and other actions.

Various bureaus of the Department of the Interior have expressed concern as to whether, in the absence of exclusive jurisdiction, con-

troversies with the States over compliance with State hunting license, bag limit, open season and similar fish and game regulations in carrying out programs of reduction of game over-population on certain properties and extermination of carp and similar harmful species in the waters thereof will not increase. The Committee agrees with the Department in its view that just as the Department may not be prevented from carrying out such programs on its lands, even though it has acquired no Federal legislative jurisdiction over them, even though it has acquired no Federal legislative jurisdiction over them, a State cannot control the manner in which it carries them out. (See Hunt v. United States, 278 U.S. 96 (1928)).

The implication of the mentioned remarks by the Department of the Navy, the Veterans' Administration, and the Department of the Interior might appear to be that Federal and State authorities are in a constant state of conflict over the application of State authority to Federal reservations. But specific information received from the many hundreds of local installations in Virginia, Kansas, and California would indicate that just the opposite is actually the case. Replies of these individual installation managers to questionnaire B give an almost uniform picture of harmony and good relations between themselves and State and local officials. The State and local authorities would appear without significant exception to cooperate fully with Federal officials where such cooperation on their part is desired, and to adopt a hand-off altitude as to those aspects of the installations' activities where it is the desire of the Federal officials that they do so. And this would appear to be the case irrespective of the jurisdictional status of the site of the Federal installation.

While it is true that the hundreds of court decisions, legal opinions, memoranda of law, and similar material dealing with conflicts that have arisen in this field would indicate that such harmonious relations have not always existed, it would appear that as of the present time the relations between State and local officials are generally on a live-and-let-live basis. In addition, an examination of the synopses of this material by the Committee has led it to the belief that a very large proportion of the conflicts dealt with problems that no longer exist (e. g., taxation questions now no longer in existence by virtue of the Buck Act, Federal Aid Highway Act (Hayden-Cartwright Act), and similar enactments) or with matters where the Federal Government could have secured immunity on either of two grounds--exclusive legislative jurisdiction in the United States or Federal constitutional immunity from State interference, and on whichever ground the Federal Government has stood it has similarly prevailed. The history of the existence of conflicts with respect to activities carried out on exclusive legislative jurisdiction lands establishes, more-

over, that all conflicts cannot be avoided by recourse to acquisition of exclusive legislative jurisdiction.

To summarize, in the field of the application of the police powers of the State to the activities of the Federal Government, there can be no application of State authority based on the exercise of such power directly to the Federal Government or its instrumentalities. Thus, whatever immunity from direct State interference is required by an installation manager or commander in the performance of his Federal functions would appear to be sufficiently guaranteed to him by constitutional provisions other than that dealing with exclusive legislative jurisdiction and those problems envisaged in determining the boundaries of this Federal immunity do not appear to have arisen in actual practice to any significant degree. The fact that they have arisen, and in exclusive jurisdiction areas, demonstrates that exclusive jurisdiction is not a panacea for avoiding such problems.

After careful consideration of the foregoing the Committee is constrained to the view that the necessity for avoidance of direct State or local interference with Federal activities is entitled to little weight as a factor in determining the need for exclusive legislative jurisdiction on the part of the Federal Government.

Indirect interference.--A matter of considerable significance to the agencies which have favored exclusive jurisdiction for their installations within the States is the lack of immunity of the Federal Government and its instrumentalities,in the absence of such jurisdiction, from certain indirect State interference with, or certain regulation and control of, various activities at the installations. By "indirect" in meant a control or interference accomplished by controlling or regulating private persons, corporations, or agencies that are in the position of employees of the Federal Government or are acting as its suppliers, contractors, or concessionaires rather than by a direct impingement of State authority upon an arm of the Government. The Army, for instance, expresses concern over the adverse effect State miscegenation statutes might have on its troop deployment and assignment procedures if less than exclusive legislative jurisdiction is had over bases within States having such laws in effect. It is noted by the Committee, however, that the Army presently has less than exclusive jurisdiction over numerous bases without apparent adverse effect in this respect. The

Department of the Navy envisages increased procurement costs as to items subject to State minimum price regulations if deliveries are made in areas not within the exclusive jurisdiction of the United States, although the General Counsel of that Department is inclined to believe that this factor alone would not justify the acquisition of exclusive legislative jurisdiction. Each of

the military departments expresses the opinion that lack of exclusive legislative jurisdiction would subject the sale, possession, and consumption of alcoholic beverages on military reservations to a very large measure of indirect State control. However, it is not suggested that such control is a seriously adverse factor with respect to the many reservations now under less tan exclusive jurisdiction. While these problems are not he sole examples of indirect State control and regulation, they serve to illustrate the varied types of problems with which the land-managing agencies may be required to cope in areas where they do not have exclusive legislative jurisdiction.

Most of the problems which can be ascribed to indirect State interference which Federal agencies and their instrumentalities encounter with respect to installations over which the United States does not exercise exclusive jurisdiction aries from attempts by the State to apply, indirectly, either their taxing or their police powers to Federal activities. As to the taxing power, it is clear that the Federal Govern enjoys no general immunity from the economic burden of State taxes imposed on its contractors (Alabama v. King & Boozer, 314 U.S. 1 (1914). Any immunity in this regard must flow from taxable transaction occurs or the taxable object is located. At the present time the financial savings which accrue to the United States by virtue of this immunity would appear not to be significant in view of Congress' consent to the applicability of State taxes on gasoline sales, other sales and uses, and income earned on Federal reservations regardless of the jurisdictional statuses of the reservations. However, the losses to the States because of their inability to ta privately owned property located on exclusive jurisdiction areas is obviously considerable, although only in relatively rare cases does the United States receive direct benefit from immunity of private property from taxation.

Where license or similar charges, or minimum price laws, imposed under the police power of the State are involved, there would appear to be some advantage to exclusive legislative jurisdiction being vested in the United States. If suppliers of agencies of the United States or their instrumentalities are to enjoy freedom form the applicability of State minimum resale price laws, for example, it must be considered that in the absence of congressional restrictions on the States the suppliers can derive such freedom only from the fact the sale took place on lands under the exclusive legislative jurisdiction of the United States. The cases of Penn Dairies, Inc. v. Milk Control Commission (318 U.S. (1943)), and Pacific Coast Dairies v. Department of Agriculture of California (318 U.S. 285 (1943)), would appear to have made at least that mush clear.

The alcoholic beverage control laws and regulations of the States would appear to be a source of potential conflict should the United

States relinquish its exclusive jurisdiction over lands on which the Federal occupant thereof deals in such beverages. The Federal Government enjoys a considerable amount of freedom from indirect State control in its dealings, through such instrumentalities as officers and noncommissioned officers messes, in alcoholic beverages where such dealings are confined to areas under the exclusive jurisdiction of the United States. Concessionaires of the Government also participate in this freedom. Through the freedom has not gone unchallenged, judging by the large number of legal opinions in which the chief law officers of the various departments have had to defend it, it has been firmly established since the case of Collins v. Yosemite Park Co. (304 U.S. 518 (1937)). That case laid down the principle that shipments from an out-of-state supplier to a consignee within a reservation under the exclusive jurisdiction of the United States are not importations into the State within the meaning of the 21st amendment and therefore not subject to control by the State under authority of that amendment. Where the United States does not have exclusive jurisdiction, however, the police power of the State as expressed in its alcoholic beverage control laws and regulations would appear to have a considerable impact on Federal installations. Although there can be no direct interference by the State with Federal instrumentalities, the indirect effects would be considerable, since to a large extent State regulation in this field is exercised through the control, regulation, and licensing of distributors, wholesalers, warehousemen, and like persons. In addition, where sales of alcoholic beverages are handled by concessionaires, as is the case in certain national parks under the administration of the Department of the Interior, such sales and all incidents connected therewith would appear to come under he complete control of the States.

The Committee finds that while the United States and its instrumentalities are not directly subject to State and local laws and regulations which have the effect of impeding Federal use of property, regardless of the legislative jurisdictional status of the property involved, such laws and regulations in some instances indirectly may affect Federal activities to some degree on property which is not immunized from them by its jurisdictional status.

On the other hand, assuming all immunization possible, as by the procurement for an area of exclusive federal legislative jurisdiction, laws and regulations enacted under the authority of the State may have an even more objectionable effect. Many State-enacted police power regulations would be carried over has Federal laws under the

rule of international law discussed earlier. Because such laws eventually become obsolete, compliance with them would have an even more objectionable effect tan compliance with similar, but more up-to-date, State regulatory measures. Under an exclusive legislative jurisdiction status, builders, contractors, and similar persons operating for the Federal Government on a Federal area may be required to comply with the obsolete laws to avoid liability in the event of misadventure, for otherwise they could be held liable in a personal action by an injured party under some circumstances.

It is noted by the Committee that each of the federal agencies which indicates a preference for a jurisdictional status for its properties which would insulate such properties from application of State laws and regulations presently conducts its activities to a considerable extent and without apparent serious handicap on properties not so insulated.

The Committee feels that weight must be given to all these and other factors in determining whether exclusive legislative jurisdiction, or appropriate partial jurisdiction, is desirable for installations on which various Federal activities are conducted, and it further feels that in the usual case the balance will be on the side of not vesting exclusive or partial jurisdiction in the Federal Government.

Security.--Several agencies have suggested that exclusive (or, in some cases, at least concurrent) jurisdiction is necessary to provide adequately for the physical security of their installations. Although there was no precise definition of the word "security" by the Committee or any of the reporting agencies, it is assumed that all agencies using the term had roughly equivalent understandings of what the term embraced. As used in the present section of this report it should be taken to mean the protection afforded an installation by internal and external measures too control the entrance and departure of all persons into or from the installation and to prevent the unauthorized entry or departure by force or covert means of any persons, to prevent the unauthorized removal of Government property by persons leaving the installation, and all other measures taken by the manager or commander to prevent depredation of Government property, or subversion, sabotage, or similar activities within the installation.

Although security of the installation has been given by several agencies as a reason for desiring legislative jurisdiction (e.g., Army, Air Force, Veterans' Administration, Bureau of Public Roads), the two agencies with perhaps the greatest need for the security of their installations, the Atomic Energy Commission and the Central Intelligence Agency,. indicate that they have experienced no difficulties in enforcing strict security requirements in any of their installations

despite the fact that most of the sites are held under only a proprietorial interest. Furthermore, the Department of the Navy, relying on an opinion of the Judge Advocate General of the Navy, reports that it is its view that there is no connection between security of a base and the jurisdictional status of its site. The Navy feels that if the adequate performance of a Federal function requires such measures as erecting fences, arming of guards, or using force in evicting trespassers or protecting Federal property, then the measures may be taken regardless of the jurisdictional status of the land.

On the other hand, certain other agencies have suggested that the arresting of trespassers is on a firmer legal footing if the United States has an appropriate measure of legislative jurisdiction. This is true presently with respect to areas under the supervision of the General Services Administration, because that agency possesses authority under the provisions of the act of June 1, 1948 (62 Stat. 281, as amended (40 U.S.C. 318)), to appoint its uniformed guards as special policemen with power of arrest somewhat greater than those of a private person only where the United States has acquired exclusive or concurrent jurisdiction over the property. By General Services Administration may, upon request, detail its special policemen to properly administered by other agencies and may extend to such property the application of its regulations. It has been indicated to the Committee, however, that as a matter of policy the General Services Administration will not detail its special policemen to any Federal establishment unless there is already some General Services

Administration organizations and since as a matter of policy certain Federal agencies are unwilling to accede to the latter of these conditions, the acceptance of concurrent or a greater measure of jurisdiction provides no cure-all if police authority is necessary to the security of Government installations. However, the Committee proposes to recommend a helpful amendment to the act of June 1, 1948, as amended, by eliminating therefrom the requirement for exclusive or concurrent jurisdiction, as not constituting a necessary or desirable requirement. With this amendment GSA guards will be able to exercise police powers over federally owned property without regard to its jurisdictional status.

With regard to the question of the security of Federal installations the Committee is inclined to the view that the opinion advanced by the Department the Navy that adequate security of Federal installa-

tions can be obtained irrespective of the jurisdictional status of their sites is legally correct. On the other hand, it recognizes that Federal civilian guards, security patrols and like employees may more zealously safeguard the property and interests of the United States if they are invested with the civil liability for false arrest or imprisonment. The Committee feels, however, that the proper means of accomplishing this is by the enactment of legislation along the lines discussed in the immediately preceding paragraph rather than by the acquisition of exclusive or concurrent jurisdiction so that title 40, United States Code, sections 318 and 318b may be applied. For that reason the Committee does not accord a great deal of weight to the argument that the acquisition of exclusive (or concurrent) jurisdiction would aid in obtaining increased security for Federal installations.

Uniformity of administration.--One of the advantages mentioned by agencies favoring exclusive legislative jurisdiction was that uniformity of administration would be secured. It is assumed that this presupposes that exclusive jurisdiction is essential for some installations of the agency. To be sure, absolutely uniform administration of all its installations located in the United States could be accomplished by any agency in such circumstances only if all its installations were in an identical jurisdictional status. However, no agency has expressed a desire that all its lands be held in an exclusive jurisdictional status, and any such desire would be futile as a practical matter, since no agency now has all its property in that status and approximately half the currently do not grant exclusive jurisdiction to the United States in the ordinary case. For similar reasons uniformity of administration is therefore not believed by the Committee to be a valid argument for any particular quantum of legislative jurisdiction other than a proprietorial interest.

Miscellaneous.--In addition to these major arguments which the several agencies favoring exclusive legislative jurisdiction have advanced, there are several others which certain of the agencies have mentioned. Although one such argument is that the surrender of exclusive jurisdiction would result in increased taxes to Federal residents of the areas affected, no agency has put any particular emphasis on this factor in its discussion of the relative or demerits of various jurisdictional statuses. This is understandable in view of the large inroads that recent congressional enactments have made into the broad tax immunities which these residents at one time enjoyed. Today, as has already been indicated, property taxes are the only

taxes of any significance which are inapplicable to residents of Federal enclaves.

Apart from the strictly legal incidents of exclusive legislative jurisdiction, installations of the Department of the Navy, with concurrence

indicated by the Navy, suggest that an exclusive jurisdiction status makes for better relations with the surrounding community in that it is generally recognized by State and local officials as vesting in the installation commander authority which such officials might otherwise claim. Although the Navy report is the only one in which this factor is specifically mentioned, the Veterans' Administration, Army and Air Force reports would seem to imply similarly. However, no agency has furnished the Committee has been unable to evaluate its validity. The Committee has noted, however, that with great uniformity individual Federal installations, whatever their jurisdictional status, have reported existence of excellent relations with neighboring communities.

The military departments express concern that as to crimes committed within Federal areas of less than exclusive legislative jurisdiction conflicts will arise with State authorities as to which sovereign will exercise its respective jurisdiction. The Army apparently envisages a possibly considerable increase in the State prosecution of soldiers who have already once been tried either by court-martial or in Federal district court. From the answers that have been submitted by individual installations to questionnaire B, however, it would appear that the basis of this argument is more theoretical than actual. As has been several times pointed out, the answers to questionnaire B paint an almost uniform picture of good Federal-State relations wherever Federal installations are located. Although conflicts of this nature appeared to be an e fear on the part of many installation commanders, not a single actual incident was reported to the Committee to illustrate that the problem was actual and not just theoretical. The Committee therefore is inclined to the view that this factor is of little significance in determining the type of legislative jurisdiction which the United States should accept over its properties.

C. PROBLEMS CONNECTED WITH EXCLUSIVE (AND CERTAIN PARTIAL) JURISDICTION

State service generally.--Probably the one fact that impressed the Committee most in the reports of the agencies favoring exclusive legislative jurisdiction, or partial legislative jurisdiction approaching exclusive, was that the installations in these jurisdictional statuses controlled by these agencies were very generally operated as though the United States had only concurrent legislative jurisdiction or only a proprietorial interest. Furthermore, the manner of their operation was incompatible with the exercise by the United States of exclusive

or partial legislative jurisdiction.. Almost uniformly, notarizations were performed by notaries public under the commission of the State in

which the installation was located; State coroners frequently investigated deaths occurring under unknown circumstances within such areas; and vital statistics (marriages, births, deaths) were recorded in State or county recording offices. In numerous instances local police and fire protection was furnished to and n the Federal installation. In very many instances residents of the enclave were to all intents and purposes regarded as citizens of the State so far as their civil and political rights were concerned. Thus, their children were accepted on an s in local schools, they were given the right of suffrage, they were accorded access to State courts in such matters as probate, divorce and adoption of children, and they were treated ass citizens of the State in obtaining hunting licenses and reduced tuition to State colleges sand universities.

The extra--legal nature of many of the mentioned services and functions rendered by or under the authority of a State in an areas under Federal jurisdiction is obvious. Such services and functions are requisite to the maintenance of a modern community. Although by article I, section 8, clause 17, of the Constitution, Congress is empowered to exercise "like" authority over such areas as it exercise over the District of Columbia, it has not done so. As to these Congress has not made (and as a practical matter probably could not attempt to make), provision for their municipal administration. The very general requirement within Federal installations for various of State or local governments appears to have made exceedingly rare the installation which actually operates within the legal confines of Federal exclusive jurisdiction. Such being the case, the Committee questions whether it is possible to maintain many installations in that status.

The Committee considers it important that various necessary services and functions rendered in Federal areas by or under the authority of States be put on a firm legal footing.

Fire protection.--Among the foremost of the functions and services provided under State authority to Federal installations is fire protection. Except for large, self-supporting installations and for installations located in remote areas, it would appear from the answers to questionnaire B submitted to the Committee that, in general, Federal installations within the Sates rely to some extent upon local, non-Federal fire-fighting services. This would appear to be true irrespective of the jurisdictional status of the federal site. These services are secured through a variety of arrangements. For areas under the

exclusive jurisdiction of the United States arrangements have varied all the way from formal contracts with local agencies to mere assumptions on the part of the Federal manager that the local fire department will respond if called in an emergency. In cases where the Federal agency has its own fire-fighting equipment, the arrangement is generally reciprocal in that each party will respond to the call of the other in emergencies beyond the capabilities of either's individual capacity. Where the United States has exclusive or one of various forms of partial legislative jurisdiction the furnishing of these services by the State would appear to be strictly a matter of grace although the Comptroller General of the United States has ruled to the contrary. In the absence of express agreement by State authorities, there is no legal obligation whatever on the part of a non-Federal fire company to respond to a fire alarm originating within the Federal enclave, and questions of the applicability of

compensation benefits to firemen in case of their injury when fighting a fire in a Federal enclave apparently may arise in some instances. In the cases of small, weakly staffed Federal installations the consequences of this incident of exclusive or partial legislative jurisdiction may be serious, indeed. Generally, however, with respect to areas over which the State exercises jurisdiction, while the furnishing of fire protection for law owned buildings would still be a matter for the consideration of officials of State or local governments, the obligation would appear to be a concomitant of the powers exercised by those authorities within such areas (Laugh.Gen.Dec. B-126228, of January 6, 1956).

Refuse and garbage collection and similar services.--Analogous to the problem of fire protection are problems connected with other types of services which in ordinary communities are generally furnished by local or State governments. Among these services are refuse and garbage collection, snow removal, sewage, public road maintenance and the like. Where the United States has exclusive jurisdiction and the installation is not self-sustaining in these respects, it would appear from the information furnished by individual installations that in most cases these items are handled on a contractual basis with some local governmental agency. As in the case of fire-fighting services, there is no obligation on the part of the contractor, apart from that under the contract, to continue furnishing such services where the United States has exclusive or certain partial jurisdiction. Should the local agency decline to continue them, there might result considerable inconvenience and expense to the Federal Government. On the other hand, should the local agency furnish them there would not aries, at least from the Federal point of view, the questions of legality,

with serious implications, which present themselves in connection with the furnisher services.

Law enforcement.--In the matter of law enforcement more difficult legal and practical questions are raised. From the reports received by the Committee it would appear that many agencies have encountered serious problems, which often have not been recognized, in this field in areas of exclusive or partial legislative jurisdiction. The problem is most acute in the enforcement of traffic regulations and "municipal ordinance type" regulations governing the conduct of civilians. Although specific authority exists for certain agencies (e. g., General Services Administration and the National Park Service the Department of the Interior) to establish rules and regulations to govern the land areas under their management and to attach penalties for the breach of such rules and regulations, and authority also exists for these agencies to confer on certain of their personnel arrest powers in excess of those enjoyed by private citizens (General Services Administration only if the United States exercises exclusive or concurrent jurisdiction over the area involved), this authority has provided no panacea. Despite the fact that General Services Administration may extend its regulations to land under the management of other agencies and provide guard forces for such areas at the request of these agencies, for reasons which have already been discussed it has been impossible for all agencies of the Federal Government to avail themselves of the statutory provisions mentioned. As to civilians, therefore, Federal enforcement measures for traffic and similar regulations are limited often to such nonpenal actions as ejection of the offender from the Federal area, revocation of Federal

driving or entrance permit, or discharge (if an employee).

Where serious crimes are committed in areas of exclusive Federal jurisdiction, generally the full services of the Federal Bureau of Investigation, the United States attorney, and the United States district court are available for detection and prosecution of the offenders. On the other hand, in the case of misdemeanors or other less serious crimes, there is generally no adequate Federal machinery for bringing the offenders to justice. If there is a United States commissioner reasonably available, there is generally no official corresponding to a town constable or municipal policeman. Some Federal installations, judging by their replies to questionnaire B, have attempted to solve this problem by authorizing local or State police to enforce State or Federal areas of exclusive or partial legislative jurisdiction. The possible consequences of such obviously extra-legal measures are a matter of serious concern to the Committee.

Another difficulty arising with respect to exclusive jurisdiction areas is determining which activities defined as crimes by State law are punishable under the Assimilative Crimes Act. The act, as has been said, does not apply to make Federal crimes based on State statutes which are contrary to Federal policy. However, difficulty often arises in determining whether a Federal policy operates to negate the ate statute under the Assimilative Crimes Act. Indeed, it is possible that individuals may risk punishment for conduct which they cannot be certain is in violation of law.

Notaries public and coroners.--From the reports submitted to the Committee in reply to questionnaire B it would appear that in many areas of exclusive or partial legislative jurisdiction the services of State licensed notaries public are utilized. In many cases it would appear that a Federal employee holds a commission as a State notary public and his services are utilized for all officially required notarizations. Although none of such notarizations appears to have been challenged, the possibility of challenge is ever present in view of the probable lack of jurisdiction of the State notary in an area of exclusive Federal jurisdiction and many areas of partial jurisdiction.

The question of the authority of a local coroner to make an official inquiry in cases of deaths arising under unknown circumstances has arisen on many occasions. The chief law officers of the various agencies have a number of times been called upon to rule on such questions. In those opinions the law officers have uniformly advised their agencies that coroners had no jurisdiction in areas over which the United States exercised exclusive jurisdiction. Nevertheless, the replies to questions when an unexplained death occurs to call in the local coroner. The practical need for the services of this official is obvious when it is considered that the Federal Government has no general substitute, that it would be impracticable for the Federal Government to furnish such services to its many small scattered or remote establishments, and that death certificates issued by a recognized authority are necessary for many purposes.

Personal rights and privileges generally.--One of the most unfortunate incidents of the exercise by the Federal Government of exclusive legislation over areas within the States is the denial to the residents thereof of many of the rights and privileges to which they would otherwise be entitle except for such residence. Since these disadvantages are unattended by certain tax advantages which flowed from such residence prior to the enactment of the Buck Act and

similar statutes, exclusive jurisdiction is relatively bare of compensations to such residents.

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Probably foremost in the minds of the persons concerned is the denial of the right of suffrage. However, other equally important rights and privileges are denied these residents Among those mentioned by the various agencies are the right of children to attend local public schools; qualification for such State sanatorium or mental institutional care, public library, etc.; qualification by domicile for access to civil courts in probate, divorce and adoption proceedings; and the right to be treated as "residents of the State" in such matters as hunting and fishing licenses, reduced tuition to State colleges and universities, and many other purposes.

It was surprising to the Committee, in reviewing the hundreds of replies to questionnaire B, that there was no uniform practice on the part of the three States (California, Kansas and Virginia) from which the information required by these questionnaires was derived as to the denial of such rights and privileges. For example, in two Federal areas of exclusive jurisdiction within the same city, the residents of one were accorded the status of full citizens by State officials while the residents of the other were denied all rights thereof. Surprisingly, even in some cases when the Federal Government exercised no legislative jurisdiction whatever, the residents were denied certain privileges they should normally have been accorded as residents of the State. The Committee can only conjecture as to the reasons for such diversity of practice on the part of State officials. Among the factors which the Committee surmises might have an influence upon the State or local officials are (1) the size of the Federal installation and the number of residents thereof (this would determine,
for instance, what the impact of participation by Federal residents in local elections would be); (2) the predominantly military or nonmilitary character of the residents and their identification with the community by long residence, unity of interest and concert of purpose; (3) the good or ill feeling existing between the Federal installation and the community at large; (4) whether the State has legislation specifically conferring political and civil rights on residents of Federal enclaves, although interpreted as retroactive insofar as the granting of civil and political rights is concerned, the practice is not uniform; and (5) the very general unawareness of local, State and Federal officials of the jurisdictional status of the lands and the incidents of such status.

Voting.--It is clearly settled that should the State choose to do so, it could deny the right to vote to residents of areas of exclusive Federal jurisdiction. A few States (among them California) have granted the right of suffrage to residents of such enclaves but such States

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are the exception rather than the rule. According to reports received by the Committee there are more than 90,000 residents other than Armed Forces personnel on Federal areas within the States of Virginia, Kansas, and California alone, plus persons residing in 27,000 units of Federal housing. In view of the close connection that the right of

suffrage bears to the traditions and heritage of the United States, the disenfranchisement or even the possibility of the disenfranchisement of such a large number of United States citizens is a cause for serious reflection.

Education.--The problem of education of children residing in areas of exclusive and partial Federal jurisdiction is a serious one and has been the cause of a multitude of controversies. That it can be reported that so far as is unknown to this Committee not a single child is being denied the right to a public school education because of his residence on a Federal enclave is in itself a commendation of the work of the Department of Health, Education, and Welfare and the Commissioner of Education.

It is obvious that the presence of large numbers of school-age children in Federal enclaves has a considerable impact on local school districts. This is particularly true in the remote, sparsely settled areas in which so many of our Army, Navy, and Air Force bases are located. In recognition of the Federal Government's responsibility to reduce the effects of this impact Congress has enacted certain statutes to provide financial aid to affected school districts, and in the last fiscal year nearly $200 million were expended under these statutes. The act of September 30, 1950 (64 Stat. 1107), as amended (20 U.S.C. and Supp. 241), authorizes the Department of Health, Education, and Welfare to grant financial aid to localities for the operation and maintenance of their schools based on the impact which Federal activities have on the local educational. Such aid usually takes the form of monetary grants to local school agencies in proportion to the increased burdens assumed by such agencies in accordance with certain formulas given in the act. If, however, State law prohibits expenditure of tax revenues for free public education of children who reside on Federal property or if it is the judgment of the Commissioner of Education that no local educational agency is able to provide free public education, he may make such other arrangements as are necessary to provide for the education of such children. The act of September 23, 1950 (54 Stat. 906), as amended (20 U.S.C. Supp. 300), provides for similar aid in school construction.

It may readily be perceived (and it has been so reported to the Committee) that the impact which Federal captivities have on local educational agencies bears no direct relation to the jurisdictional

status of Federal property upon which the school children reside or upon which their parents may work or be stationed. The Department of Health, Education, and Welfare has pointed out, however, that the holding of many areas of land under exclusive Federal jurisdiction has served to intensify the problem of Federal officials administering the program. This results from the various court holdings to the effect that there is no obligation on the part of a State to accept resident children from an areas of exclusive Federal jurisdiction. White it appears that most school districts do accept such children, at least when accompanied by a grant of Federal aid, on occasion some have chosen not to accept them even under such terms. In these and other instances the school districts involved sometimes have insisted on financial arrangements more advantageous to themselves than those generally enjoyed by other districts similarly affected. This obviously results either in the Federal Government's being required to assume the entire responsibility for providing for the schooling of these children, or deprives more cooperative school districts of their fair share of the Federal funds available for education.

Assuming that the States accept as their obligation the education of resident children, children residing on federally owned or leased land not within the exclusive or certain partial legislative jurisdiction of the United States would appear to be entitled to the same educational opportunities as other children. Of course, so long as the act of September 30, 1950, as amended, supra, and the act of September 23, 1950, as amended, supra, remain effect the State would be entitled to financial aid for the impact the presence of these children has on the local school agencies, but the fact that the Federal Government has recognized its obligation in this respect would appear not to diminish the obligation of the State. Assuming, then, that the State recognizes its obligation, the Federal Government could at least have the assurance that the education of the children was provided for without taking on the burdensome task of setting up a school system entirely apart from that of the State.

Miscellaneous rights and privileges.--With regard to other rights and privileges which are accorded private persons based on their residence within a State the Committee received a wealth of information. Because of the inconsistencies in these matters, however, it was early impossible to draw any definite conclusions. In some localities residents of an area of exclusive Federal jurisdiction were accorded all the privileges they would have enjoyed had the Federal Government not divested the State of its jurisdiction. They were granted resident hunting and fishing license privileges, resident tuition rates at State-

supported educational institutions, admission to State-supported hospitals and sanatoriums, State or county visiting nurse service and the like. On the other hand, in other localities only a short distance away, persons in identical legal circumstances were denied some or all of these services.

One fact did impress itself on the Committee--that there was no uniform desire on the part of State officials to deny to residents of areas of exclusive or partial Federal jurisdiction the rights and privileges to which they would otherwise have been entitled if the State's jurisdiction over the area of their residence had not been ousted. Whether the granting of these rights and privileges is a conscious policy on the part of the States is not known to the Committee. Obviously, in the cases of States which have conferred civil and political rights on residents of Federal areas by statute (e.g., California), the policy has been consciously and deliberately evolved. In nearly all cases where this policy is followed, however, it would appear that it is done as a matter of grace, despite the fact that the retrocession of certain tax benefits to the States by the Buck Act and similar Federal statutes may give rise to obligations in return for benefits conferred. To the extent that they are a matter of grace, they could be discontinued by the States at any time. The consequences of such discontinuance might be very serious to residents of these areas.

Benefits dependent on domicile.--It would appear doubtful to the Committee, however, whether a State could, despite its bast intentions, bestow certain types of benefits upon the residents of areas of exclusive Federal jurisdiction. The Committee refers particularly to those benefits which depend upon domicile within a State. An example is the right to maintain an action for divorce. Since Congress has provided no law of divorce for areas of exclusive Federal jurisdiction the residents of such areas must resort to a

State court for relief. Several States have enacted statutes conferring jurisdiction on their courts to entertain actions for divorce brought by persons who have resided in Federal enclaves within such States for designated fixed periods. The courts of a few other States have assumed jurisdiction in such cases without benefit of a similar statute. In neither case have such decrees been put to the test of collateral attack on the basis that they were rendered without jurisdiction. It therefore remains to be seen whether a resident of an area of exclusive Federal jurisdiction, by virtue of residence in such area alone, can become legally domiciled in the State in which the Federal installation is located. The problems involved in these cases are, of course, of equal significance in other situations in which domicile is the basis of a right or obligation.

D. SUMMARY AS TO EXCLUSIVE AND PARTIAL JURISDICTION

The foregoing discussion and analysis of the positions of those agencies adhering to the view that exclusive legislative jurisdiction closely approaching exclusive is desirable for their properties has run to a considerable length. Because the views are held by several major landholding agencies the Committee felt it particularly desirable to analyze these views with the utmost care and deference. In summary:

(1) The Army, Navy and Air Force, the Veterans' Administration, the National Park Service, the Bureau of the Census, and the Civil Aeronautics Administration desire exclusive or nearly exclusive legislative jurisdiction over all or part of their landholding (the Air Force indicating the a concurrent legislative jurisdiction would be an acceptable substitute under certain circumstances).

(2) These views are based on a number of reasons. The most frequently mentioned of these are as follows (not all of the reasons being advanced by each agency)'

(a) Freedom of Federal manager from State interference in the performance of Federal functions. All agencies understand (though the answers to questionnaire B indicate that their subordinate installations do not in many cases) that the Federal Government enjoys a constitutional immunity from such interference by virtue of the supremacy clause. What they wish to avoid is unnecessary litigation to prove this constitutional immunity.

(b) Enhancement of security of installation.

(c) Freedom of Federal Government from burdens of application of State's police power to contractors, licensees, etc., operating within Federal enclave.

(d) Uniformity of administration.

(e) Psychological advantage to Federal manager in his dealings with State and local officials.

(f) Clarity of the authority of the Federal Government in the enforcement of criminal law and avoidance of conflicts with State authorities.

(g) Accrual of certain tax advantages to resident personnel.

(3) These views generally take into account that exclusive legislative jurisdiction and many forms of partial jurisdiction are attended by the following disadvantages:

(a) Occurrence of difficulties i the enforcement of traffic regulations and minor criminal laws or regulations against civilians.

(b) Unavailability of certain services ordinarily furnished by State or local governmental agencies.

(c) Loss by residents of the area of civil and political rights normally flowing from residence in a State.

(4) The Committee, in general, looks askance on Federal exclusive legislative jurisdiction and most forms of partial legislative jurisdiction for the reasons that:

(a) Certain of the reasons advanced by the agencies advocating this measure of jurisdiction are legally unsupported. Specifically, Federal operations may be carried on without any direct interference by States, and the security of Federal installations may be adequately safeguarded, without regard to the type of legislative jurisdiction; uniformity of administration may be had under a lesser form of jurisdiction.

(b) Other arguments advanced by the agencies appear not to be borne out in individual installation reports. Specifically, the reports uniformly reflect excellent State-Federal relations; fear of excessive litigation to establish immunity of Federal functions from State interference if exclusive jurisdiction is surrendered does not appear to be borne out; where concurrent jurisdiction exists, conflicts as to which sovereign will exercise criminal jurisdiction appear not to have developed to any significant degree; the psychological advantage claimed for this type of jurisdiction has not been illustrated.

The only apparent advantages to Federal exclusive legislative jurisdiction or partial jurisdiction approaching exclusive, on the facts made available to the committee, are certain minor tax advantages to residents of the areas and freedom of the Federal Government from the indirect effects of the exercise by the State governments of their police powers against Federal contractors, concessionaires, licensees, etc. The latter of these would appear to be entitled to considerable weight in certain areas and under certain circumstances. However, even when it is combined with the former and the two are balanced against the disadvantages accruing to this type of jurisdiction, the scales seem to be tipped toward a lesser form of Federal legislative jurisdiction.

E. VIEWS OF AGENCIES PREFERRING CONCURRENT JURISDICTION

Agencies preferring such jurisdiction.--The views of the General Services Administration, the department of Health, Education, and Welfare, the Department of the Navy, the Bureau of Prisons of the Department of Justice, and the Bureau of Public Roads of the Department of Commerce, which each desire a concurrent legislative jurisdiction status for certain of their installation, are based on various grounds. The Department of the Interior also, at an early point in the study, indicated concurrent jurisdiction desirable for certain areas for

which it subsequently recommended partial jurisdiction. The Veterans' Administration has suggested that it needs at least concurrent jurisdiction should a higher form of Federal jurisdiction be deemed by the Committee as unnecessary for properties under the supervision of that agency; the Committee's views in this respect have already been

discussed in a previous section of this report.

Advantages and disadvantages.--Concurrent jurisdiction has to a considerable extent the advantages of both exclusive legislative jurisdiction and a proprietorial interest only, with few disadvantages.

To the advantage of the Federal Government is the fact that Federal power to legislate generally for the area exists. The chief interest of the Federal Government, i this connection, is that by virtue of the Assimilative Crimes Act (18 U.S.C. 13) a Federal criminal code, eatable of Federal enforcement, exists insures that crimes committed within the Federal installation will not go unpunished in spite of disinterest on the part of State authorities which can occur in instances where only Federal personnel, and no State community or individual, are directly affected by a crime. For the residents of these areas of concurrent jurisdiction it is an advantage that the obligations of the State toward them are undisturbed by the superimposition of Federal on State jurisdiction, so that they receive under a concurrent jurisdiction all the benefits of residence in the State, notwithstanding that they reside on a federally owned area. For the State there exists the advantage that its jurisdiction over the areas remains undisturbed except insofar as its operations may directly interfere with a Federal function conducted therein. The State's authority vis-a-vis the United States and persons on the area is in all practical respects the same as if the Untied States had no legislative jurisdiction whatever with respect to the area. It is because of the advantages inherent in these characteristics that concurrent legislative jurisdiction has been stated by several Federal agencies to be best suited for their needs in certain types of installations.

Such disadvantages as are peculiar to areas under concurrent legislative jurisdiction arise out of the fact hat under this status two sovereigns, the Federal Government and a State, have the authority to exercise in the same areas many of the same functions. This can result in situations where such of the sovereigns desires to perform ton received by the Committee would seem to indicate that more often it results in situations where each sovereign desires the other to act, with the occasional result that the function is not performed. So far as the Committee has been able to determine, however, no serious problems have developed out of this dual sovereignty.

General Services Administration.--This agency, which administers

an extremely large number of Government buildings, principally post offices and Federal office buildings, most of which now are in an exclusive jurisdiction status, in many cases finds requirement for furnishing special police protection to such buildings and to other areas also under its control. At the present time it is able to vest its guards with police powers only for exercise on areas under the exclusive or concurrent legislative jurisdiction of the United States. With the amendment of the pertinent statute (40 U.S.C. 318, et seq.) to permit the exercise of police powers without reference to the legislative jurisdiction of property under its control, the general Services Administration indicates, it would feel that all or substantially all of such property could be held under a proprietorial interest only. Properties not requiring special police services in any event, in the Administration, would be best served under a proprietorial interest status. The Committee agrees with these views.

Department of Health, Education, and Welfare.--Most of the holdings

of this Department, consisting largely of hospitals an similar installations, are now in an exclusive, or partial approaching exclusive, legislative jurisdictional status. On analyzing its requirements in the course of the present study the Department has come to the conclusion that, while a proprietorial interest only would be best suited for most of its properties, a concurrent jurisdiction status would be desirable for a small number of properties on which special problems of police control are involved. The Committee concurs.

Department of the Navy.--This Department feels that for its so called minor installations concurrent legislative jurisdiction is desired in order to provide a Federal criminal code by virtue of the Assimilative Crimes Act (18 U.S.C. 13). Consequently, the Department feels that concurrent jurisdiction would be the minimum measure of Federal jurisdiction that would satisfy its needs.

The Committee fails to see any requirement for the retention by the Federal Government of general law enforcement authority in naval installations where the provision of such service is within the ability of State and local law-enforcement agencies. This will be particularly true if there are adopted recommendations proposes by the Committee that heads of Federal agencies be given authority to

promulgate and enforce rules and regulations for the Government of the Federal property under their control, without reference to the jurisdiction status of such property. It is to be noted that, in any event, existing Federal statutes designed for the protection of Government property and of defense installations are applicable to naval installations without reference to their jurisdictional status. Further, the Uniform Code of Military Justice similarly is applicable to offenses which may be committed by uniformed personnel.

From its study of the Navy's report the Committee properties administered by the Department a proprietorial interest would be most advantageous. Only as to the occasional naval installations removed from civilian centers of population which can furnish these installations adequate law-enforcement services does the Committee believe that concurrent jurisdiction would be required. In this regard, it is noted that to a large extent the Navy's properties are presently in a proprietorial interest status (approximately 40 percent of its acreage), as a result of the Navy's policy of acquiring Federal legislative jurisdiction only when the local commander makes a substantial request that the Department do so, and the Navy's report does not indicate that any serious or troublesome problems arise out of this status.

Bureau of Prisons.--This Bureau of the Department of Justice indicates that for its installations in which prisoners are maintained, a concurrent legislative jurisdictional status would be desirable. These installations presently have various jurisdictional statuses. It is pointed out as incongruous that a Federal prisoner who commits a crime beyond that which can be handled by administrative measures in a Federal prison institution should have to be tried in State courts, under State law, and be sentenced to a State penal institution, in the absence of at least concurrent criminal jurisdiction in the Federal Government over the institution where the crime was committed. On the other hand, the Bureau has no wish to deprive its guard force and other personnel and their families of the privilege of voting and other integration into the normal life of the communities in which its installations are located, as often occurs

under a jurisdictional status greater than concurrent. The Committee is in agreement with the views of the Bureau of Prisons.

Bureau of Public Roads.--This Bureau of the Department of Commerce, while it considers only a proprietorial interests in the United States best suited to the great majority of the properties under its supervision, desires that the status of its equipment depot areas and of a certain laboratory and testing area be changed to concurrent legislative jurisdiction. At present certain of these properties are

under the exclusive jurisdiction of the United States while other are in a proprietorial interest only status. In the view of the Bureau, by giving to all these properties a concurrent jurisdictional status law enforcement as to trespasses and minor offenses would be made easier. Local police could be called in and, it is suggest, additionally the concurrent jurisdiction would empower the United States Park Police to act.

Since, except in the District of Columbia, the arrest powers of Park Police (and by implication their enforcement authority) are limited to violations "of the laws relating to the national forests and national parks" (16 U.S.C. 10), there would appear to be no authority for the Park Police to act in areas under the management of the Bureau of Public Roads, irrespective of their jurisdictional status. As this is the only basis given by the Bureau for acquisition of any form of legislative jurisdiction, it would appear that none is necessary.

The Committee feels that a proprietorial interest would be entirely sufficient for the needs of all the several properties of the Bureau of Public Roads.

Department of the Interior.--This Department proprietorial interest only as most desirable for the great bulk of the vast areas of Federal lands under its supervision. However, in its initial submission of information to the Committee, the Department indicated that concurrent legislative jurisdiction would most nearly suit the needs of its national parks, as to which the United States now holds exclusive or certain partial legislative jurisdiction, and of certain national monuments and perhaps wildlife areas which cover vast areas and are in comparatively isolated sections of their respective States, as to which the United States now generally holds a proprietorial interest only. This status, it was indicated, would allow effective enforcement of law and order and would insure the best protection of a number of interests, including control as may be necessary of the private inholdings which are within the boundaries of certain parks so that the inholdings do not change park characteristics. This type of jurisdiction would not adversely affect the rights of park, monument, or wildlife refuge residents so far as their relations with the States and State political subdivisions are concerned. More recently, however, the Department has modified its position, stating:

* * * the National Park Service is of the opinion that concurrent jurisdiction would not be practicable in the National Park service areas for which it was suggested. While there is no disagreement that the States should have substantial authority in federally owned areas over matters outside the spheres of interest of the Federal Government, the Service believes that concurrent jurisdiction would result in continuous disagreements and litigation over what

State laws would interfere with Federal functions. It therefore believes that partial jurisdiction is, as a practical matter, required for the areas in question.

The Department is not prepared to disagree with the National Park Service at this juncture. Accordingly, the views expressed * * * [earlier] are modified to the extent stated.

It is not clear to the Committee in which spheres of the National Park Service's operations the widespread disagreements with State authorities are expected. If it is in the field of conservation or control of hunting or fishing, there would appear to be no doubt as to the ability of the United States to prevail in disputes where proper administration of the area requires Federal control. (See Hunt v. United States, 278 U.S. 96 (1928).) If it is with respect to the enforcement of criminal laws, the Committee notes that information from individual installation which are in concurrent jurisdiction status almost uniformly is to the effect that difficulties in this respect, to the limited extent they have occurred, have occurred not out of an eagerness on the part of both sovereigns to exercise jurisdiction, but from the lack of interest of both. The Committee is of the view that concurrent jurisdiction most nearly fits the needs of the United States for national parks and for national monuments located in remote areas. In some instances, the Committee recognizes, this jurisdictional status may be desirable for some wildlife refuges.

F. VIEWS OF AGENCIES DESIRING A PROPRIETORIAL INTEREST ONLY

Federal lands largely in proprietorial interest status.--The Committee notes that as to the great bulk of land owned by the United States, including substantially all lands of the so-called public domain, the Federal Government holds only a proprietorial interest, possessing with respect to such land no measure of legislative jurisdiction within the meaning of article I, section 8, clause 17, of the Constitution. The Committee further notes that the 23 landholding agencies of the Government except the General Services Administration, whatever their views concerning the jurisdictional status which their properties should have, presently hold a substantial proportion of such properties in a proprietorial interest status only.

Agencies preferring proprietorial interest.--A proprietorial interest status, without legislative jurisdiction in the United States, is deemed best suited for their properties by the Treasury Department, the Department of Justice other than for properties in which Federal prisoners are maintained, the Department of the Interior other than for national parks and certain national monuments, the Department of Agriculture, the General Services Administration for certain properties, the Department of Commerce for most of its properties, the

Department of Health, Education, and Welfare for most of is properties, the Atomic Energy Commission, the Central Intelligence Agency, the Federal Communications Commission, the Housing and Home Finance Agency, the International Boundary and Water Commission (United States and Mexico), the Tennessee Valley Authority other than

for one property as to which judgment was reserved, and the United States Information Agency. It may be noted that the mentioned agencies control more than 90 percent of the land owned by the United States.

Characteristics of proprietorial interest status.--When the United States acquires lands without acquiring over such lands legislative jurisdiction from the State in which they are located, in many respects the United States holds the lands as any other landholder in the State. However, the State cannot tax the Federal Government's interest in the lands or in any way interfere with the Federal Government in the carrying out of proper Federal functions upon the lands. The relation of the State with persons resident upon such Federal lands, with all its rights and corresponding obligations, is undisturbed. Both the civil and criminal laws of the State are fully applicable. Primarily because of these attributes the proprietorial interest status has been named by most landholding Federal agencies as the most nearly ideal jurisdictional status.

Experience of Atomic Energy Commission.--Of the utmost significance to the Committee is that among the agencies preferring a proprietorial interest only for their properties is the Atomic Energy Commission. The Committee has attached special significance to the views of the Atomic Energy commission for a number of reasons. Among the more important is the fact that the birth of the Commission and its requirements for the occupation of land occurred after the amendment in 1940 of section 355 of the Revised Statutes of the United States had removed the statutory requirement that exclusive jurisdiction be Federal lands prior to the construction of improvements on such lands. Accordingly, the Commission had not built up any of the traditions concerning exclusive jurisdiction which seen to influence many of the other Federal landholding agencies. Additionally, like those of many naval and military reservation, the Commission's security requirements are exceedingly strict. And also similar to many military and naval reservations, some Atomic Energy Commission installations, because of their size and remote locations, have substantial populations residing within their confines.

The Atomic Energy Commission's practice and policy are to obtain no legislative jurisdiction over lands acquired by it. The only lands it holds in other than a proprietorial status are those which it has

received by transfer from other Federal agencies. Indeed, as to two exclusive jurisdiction areas upon which communities are located, the difficulties encountered were sufficient to induce the Commission to sponsor legislation which allowed it to retrocede jurisdiction to the State. While the Atomic Energy Commission recognizes that concurrent jurisdiction has to some extent the advantages of both a proprietorial interest and exclusive jurisdiction, the measure of jurisdiction has not been obtained for the reason that it provides no clear-cut line of responsibility between the fields of Federal and State authority thus, in the view of the Commission, opening the way for disputes and misunderstandings.

The Atomic Energy Commission established its policy of obtaining no legislative jurisdiction principally to (1) obtain the privileges of State citizenship for the residents of its areas; (2) allow organization of the communities into self-governing units under applicable State statutes; and (3) make State civil and criminal law applicable, making possible the utilization of established State courts for the enforcement of public and private rights and the

deputization under State authority of Atomic Energy Commission employees for law enforcement.

The Atomic Energy Commission reports that its experience has indicated that these expected advantages have in fact resulted. A possible disadvantage, interference by the State with Atomic Energy Commission security requirements, has not materialized. The constitutional immunity of Federal functions from State interference has been recognized uniformly.

Experience of other agencies.--The Central Intelligence Agency has a proprietorial interest only over its properties, and has fond this satisfactory. Indeed, except for the Army, Navy, and Air Force, the National Park Service of the Department of the Interior, and the Veterans' Administration, the views of all Federal agencies which have had any substantial experience in the management of areas held in a proprietorial interest only status parallel those of the Atomic Energy Commission. The preference of the agencies for a proprietorial interest only is based, in general, on various disadvantages flowing from possession of legislative jurisdiction by the United States. Repetition of the views of these agencies would appear to serve little purpose. The advantages and disadvantages which they ascribe to this status have already been covered in detail in the analysis of exclusive, concurrent, and partial legislative jurisdiction which has preceded.

Summary as to proprietorial interest status.--The Committee concludes in concurrence with the agencies preferring a proprietorial

interest only in the Federal Government over their properties, that for the vast bulk of Federal properties it is unnecessary for the Federal Government to have any measure of legislative jurisdiction in order to carry out its functions thereon. The Government is insulated from any attempted direct interference by State authority with the carrying out of such functions by the Federal immunities flowing from constitutional provisions other than article I, section 8, clause 17, particularly from article VI, clause 2, which provides in pertinent part:

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof;***shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Many Federal lands for which a proprietorial interest status only is acknowledged to be ideal are, however, held under some form of legislative jurisdiction. Since there exists no general authority for Federal agencies to retrocede unneeded jurisdiction to the States, appropriate legislation has been drafted by the Committee to make such retrocessions possible. The Committee also deems it desirable that uniform State legislation be enacted providing for the acceptance of such retroceded jurisdiction, so that not doubt will exist as to the precise status of the lands involved.

Chapter VIII

CONCLUSIONS AND RECOMMENDATIONS

General observations.--The thorough study which has been given to the exercise by the Federal Government of legislative jurisdiction

under article I, section 8, clause 17, of the Constitution has, in the opinion of the Committee, been long overdue. In the early days of the Republic there may have been a requirement for the exercise of such power in areas within the States which were acquired to carry out the functions vested in the Federal Government by the Constitution. However, even this is in doubt, for, as has been pointed out, there was not a uniform practice with respect to the transfer of legislative authority from the States to the United States during the first 50 years after the adoption of the Constitution. In any event, the tremendous expansion of Federal functions and activities which has occurred in the recent history of the United States with a resultant increase in Federal land holdings, changed patterns in the use of Federal lands, development of new concepts of the rights and privileges of citizens, and many other factors, have drastically altered conditions affecting the desirability of Federal exercise of exclusive legislative jurisdiction over federally owned areas.

There is no question of the current requirement for a measure of legislative jurisdiction in the Federal Government over certain federally occupied areas in the States. Indeed, in various instances the Federal Government has insufficient jurisdiction over its installations, to the detriment of law and good order. On the other hand, no doubt can exist that in the present period the Federal Government has been acquiring and retaining too mush legislative jurisdiction over too many areas as the result of the existence of laws and the persistence of practices which were founded on conditions of a century and more ago.

Careful analysis has been made by the Committee of the advantages and disadvantages to the Federal Government, to the States and local governmental entities, and to individuals, which arise out of the possession by the United States of varying degrees of legislative jurisdiction over its properties in the several States. It is clear that exclusive legislative jurisdiction on the one hand, and a proprietorial interest only on the other, each has certain but different advantages and

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disadvantages for all parties involved. As the jurisdictional status of a property varies from one to the other of these two extremes of the legislative jurisdiction spectrum the advantages and disadvantages of each tend to fade out, and to be replaced by the advantages and disadvantages of the other.

Principal Committee conclusions.--The Committee's study has been persuasive to the conclusions that--

1. In the usual case there is an increasing preponderance of disadvantages over advantages as there increases the degree of legislative jurisdiction vested in the United States;

2. With respect to the large bulk of federally owned or operated real property in the several States and outside of the District of Columbia it is desirable that the Federal Government not receive, or retain, any measure whatever of legislative jurisdiction, but that it hold the installations and areas in a proprietorial interest status only, with legislature jurisdictions several States;

3. It is desirable that in the usual case the Federal Government receive or retain concurrent legislative jurisdiction with respect to Federal installations and areas on which it is necessary that the Federal Government render law enforcement services of a character

ordinarily rendered by a State or local government. These installations and areas consist of those which, because of their great size, large population, or remote location, or because of peculiar requirement based on their use, are beyond the capacity of the State or local government to service. The Committee suggests that even in some such instances the receipt or retention by the Federal Government of concurrent legislative jurisdiction can, and in such instances should, be avoided; and

4. In any instance where an agency may determine the existence of a requirement with respect to a particular installation or area of a legislative jurisdictional status with a measure of exclusivity of jurisdiction in the Federal Government, it would be desirable that the Federal Government in any event not receive or retain with respect to the installation or areas any part of the State's jurisdiction with respect to taxation, marriage, divorce, annulment, adoption of the mentally incompetent, and descent and distribution of property, that the State have concurrent power on such installation or area to enforce the criminal law, that the State also have the power to execute on the installation or area any civil or criminal process, and that residents of such installation or area not be deprived of any civil or political rights.

Requirement for adjustments in jurisdictional status.--It is clear that the legislative jurisdictional status of many Federal installations

and areas is in need of major and immediate adjustment to being about the more efficient management of the Federal operations carried out thereon, the furthering of sound Federal-State relations, the clarification of the rights of the persons residing in such areas and the legalization of many acts occurring on these installations and areas which are currently of an extra-legal nature. Many adjustments can be accomplished unilaterally by Federal officials within the framework of existing statutory and administrative authority by changing certain of their existing practices and policies. Others may be capable of accomplishment by cooperative action on the part of the appropriate Federal and State officials. In perhaps the majority of instances, however, there is neither Federal nor State statutory authority which would permit the adjustment of the jurisdictional status of Federal lands to the mutual of the Federal and State authorities involved. For this reason the Committee recommends the enactment of certain statutes, both Federal and State, which would authorize the appropriate officials of these Governments to proceed apace in the adjustments clearly indicated.

The Committee also strongly feels that agencies of the Federal Government should do all that is possible immediately and in the future, under existing and developing law, to establish and maintain the jurisdictional status of their properties in conformity with the recommendations made in this report. The General Services Administration, in its regular inventorying of Federal real properties, should bring together information concerning the jurisdictional status of such properties in order to provide a general index of the progress made in adjusting their status. This will also provide a central source of information on the jurisdictional status of individual properties, such a central source being sorely needed, in the view of the Committee. The progress made by agencies in adjusting the jurisdictional status of their properties should be taken into account by the Bureau of the Budget in considering budget

estimates and legislative proposals which are related to such status. It is the further view of the Committee that these two agencies, together with the Department of Justice, should maintain a continuing and concerted interest in the progress made by agencies in adjusting the status of their properties and should review such progress at appropriate intervals.

Retrocession of unnecessary Federal jurisdiction.--The most immediate need, in the view of the Committee, is to make provision for the retrocession of unnecessary jurisdiction to the States. A number of Federal agencies, as well as a significant proportion of the responding state attorneys general, have made recommendations

along this line. The Committee heartily concurs in these recommendations.

The Committee feels that this end could best be accomplished by amending section 355 of the Revised Statutes of the United States, as amended (49 U.S.C. 255; 33 U.S.C. 733; 34 U.S.C. 520; 50 U.S.C. 175) so as to give to the heads of Federal agencies and their designers the necessary authority to retrocede legislative jurisdiction to the States. An appropriate amendment would permit each Federal agency to adjust the amount of jurisdiction it retains to the actual needs of the installation concerned. It is hoped, in this regard, that the present report and the forthcoming textual study will give to Federal land management agencies a full appreciation of the many factors which they should consider in making their determinations of what measure of jurisdiction best suits a particular installation. The Committee therefore recommends that section 355 of the Revised Statutes, as amended, be further amended by adding a paragraph in the following language:

Notwithstanding any other provision of law, the head or other authorized officer of any department or agency of the United States may, in such cases and at such times as he may deem desirable, relinquish to the State in which any lands or interests therein under his jurisdiction, custody, or control are situated all, or such portion as he may deem desirable for relinquishment, of the jurisdiction theretofore acquired by the United States over such lands, reserving to the United States such concurrent or partial jurisdiction as he may deem necessary. Relinquishment of jurisdiction under the authority of this act may be made by the filing with the Governor of the State in which the land may be situated a notice of such relinquishment or i such other manner as may be prescribed by the laws of such State, and shall take effect upon acceptance by the State, or, if there is in effect in the State a general statute of acceptance not specifying the means thereof, upon the day immediately following the date upon which such notice of relinquishment is filed.

Acceptance by States of relinquished jurisdiction.--It can be seen that for a relinquishment made under this proposed amendment to section 355, Revised Statutes, to be effective, there must be an acceptance by the State. The Committee feels such a provision is necessary as a matter of sound policy. It would inject some preciseness into an area which, as has been seen throughout the report, is replete with confusion and vagueness. By the use of the present provisions of section 355 of the Revised Statutes, together with the proposed addition, the proper Federal and State officials could, by the necessary exchange of instruments, fix precisely for any

Federal installation or sovereign. No parcels of Federal property affected by any change of legislative jurisdictional status under the amended section 355 would be left dangling in an uncertain status.

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At present, however, only a few states have statutory provisions which would authorize them to accept such tendered jurisdiction. The Committee therefore suggests the advisability of enactment by the States of uniform legislation in this respect. This proposed legislation might well take the form of the final section of a uniform State cession and acceptance statute which the Committee is prepared to recommend. The text of this proposed uniform statute will be set out in full text at a later point in this section of the report.

Rulemaking and enforcement authority.--An additional change in the Federal statutes which is, in the view of the Committee, of major importance is further 1, 1948 (62 Stat. 281), as amended (40 U.S.C. 318, 318a, b, c). Under the present provisions of that statute the General Services Administration is authorized to make needful rules and regulations for the government of Federal property and to annex to these rules and regulations reasonable penalties The General Services Administration is also given authority by the act to appoint its uniformed guards as special policemen for the preservation of law and order on Federal property under that agency's control, but the jurisdiction and policing powers of such special policemen are restricted to areas over which the United States has acquired rent jurisdiction. Upon the application of the head of any other Federal agency the General Services Administration is authorized to extend to lands of such an agency, over which the United States has acquired exclusive or concurrent jurisdiction, the application of General Services Administrations rules and regulations and to detail special policemen for the protection of such property.

Because of the requirement of Federal legislative jurisdiction and other practical difficulties mentioned earlier in this report, many Federal agencies have found it impossible to make use of the authority granted in the act. In other instances the requirement that the lands concerned by under the exclusive or concurrent jurisdiction of the United States before General Service Administration rules and regulations can be extended to them has resulted in the undesirable practice on the part of some agencies of acquiring otherwise unneeded legislative jurisdiction over Federal lands. For these reasons the Committee recommends that the rulemaking authority presently granted to the General Services Administration by the mentioned act of June 1, 1948, as amended, be broadened to allow the head or other duly authorized officer of each Federal land-management agency to make needful rules and regulations for the management of the Federal property under the control of such agency.

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The power to make and enforce the necessary rules and regulations for the management of Federal property does not depend, constitutionally, on the acquisition by the Federal Government of legislative jurisdiction. Indeed, several Federal agencies already enjoy authority in this respect without reference to the jurisdictional status of the lands concerned. The General Services Administration by section 2 of the act just discussed (40 U.S.C. 318a)

and the Department of the Interior with respect to the national parks (16 U.S.C. 3) provide examples of this. Additionally, it may be noted that the authority which employees of the National Park Service and the Forest Service enjoy in the enforcement of rules and regulations for the protection of the national parks and national forests is similarly free from any dependence upon the jurisdictional status of the lands concerned. For this reason the Committee recommends the elimination of the requirement of section 1, of the act of June 1, 1948, as amended (40 U.S.C. 318), that the police jurisdiction of the General Services Administration special policemen be limited to areas under the concurrent or exclusive jurisdiction of the United States. It further recommends that the regulatory authority which it proposes be granted to all Federal land management agencies should not be made to depend on the acquisition of Federal jurisdiction over the lands concerned. Because of the confusion and other adverse effects which multiplication of Federal police forces well might have on law enforcement, however, the Committee does not propose the extension to any other Federal agencies of the authority presently granted to the General Services Administration by the act of June 1, 1948, as amended, to point uniformed guards as special policemen. The authority of such agencies is, in the view of the Committee, ample to meet the needs of these agencies in that respect.

In summary, therefore, the Committee recommends that the act of June 1, 1948 (62 Stat. 281), as amended (40 U.S.C. 318-318c), be further amended as follows:

Section 1 (40 U.S.C. 318), amend all after "unlawful assemblies," to read as follows:

and to enforce any rules and regulations made and promulgated pursuant to this Act.

Section 2 (40 U.S.C. 318a), amend to read as follows:

The head of any department or agency of the United States or such other officers duly authorized by him are authorized to issue all needful rules and regulations for the government of the Federal property under their charge and control, and to annex to such rules and regulations such reasonable penalties, within the

limits prescribed in section 4 of this Act, as will insure their enforcement: Provided, That such rules and regulations shall be posted and kept posted in a conspicuous place on such Federal property. This authority shall not impair or effect any other authority existing in the head of any department or agency.

Section 3(40 U.S.C. 318b), amend to read as follows:

(1) The head of any department or agency of the United States and such officers duly authorized by him, whenever it is deemed economical and in the public interest, are authorized to utilize the facilities and services of existing Federal law-enforcement agencies, and, with the consent of any State or local agency, the facilities and services of such State or local law enforcement agencies, to enforce any regulations promulgated under the authority of section 2 of this Act.

(2) Upon the application of the head of any department or agency of the United States the Administrator of General Services and officials of the General Services Administration duly authorized by

him are authorized to detail such special policemen as are necessary for the protection of the Federal property under the charge or control of such department or agency.

Section 4 (40 U.S.C. 318c), amend to insert "than" between "more" and "$50."

"Jurisdiction of United States commissioners.--The above-recommended broadening of the regulatory and enforcement authorities of Federal agencies with regard to the management of their properties would make necessary a corresponding enlargement of the jurisdiction of United States commissioners. The present jurisdiction of United States commissioners is delineated by section 3401 of title 18 of the United States Code, which provides that United States commissioners specially designated for that purpose by the court by which they were appointed have jurisdiction to try and sentence--

persons committing petty offenses in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction.

In view of the Committee's recommendation that the regulatory authority of land management agencies of the United States be freed from the limitations of a legislative jurisdictional requirement, and in view, further, of the obvious fact that regulations issued under such authority must be capable of enforcement, a forum must be provided in which persons accused of violations of such regulations can be tried and, if convicted, sentenced. The Committee therefore recommends that subsection (a) of section 3401, title 18, United States Code, be amended to read as follows:

(a) Any United States commissioner specially designated for that purpose by the court by which he was appointed has jurisdiction to try and sentence persons committing petty offenses in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent or partial jurisdiction, or which is under the charge and control of the United States, and within the judicial district for which such commissioner was appointed.

Miscellaneous Federal legislation.--The only further amendment to Federal statutes which the Committee feels are necessary at this time are the repeal of section 103 of title 4, United States Code, and of sections 4661 and 4662 of the Revised Statutes of the United States (33 U.S.C. 727, 728), with the substitution for the last-mentioned section of a new section in title 40 of the United States Code substantially as follows:

Any civil or criminal process, lawfully issued by competent authority of any State or political subdivision thereof, may be served and executed within any area under the exclusive, partial, or concurrent jurisdiction of the United States to the same extent and with the same effect as though such area were not subject to the jurisdiction of the United States.

The Committee recommends repeal of section 4661 for the reason that its provisions requiring a cession of jurisdiction over the sites of lighthouses, beacons, public piers and landmarks as a condition precedent to the erection of such structures are inconsistent with

section 355 of the Revised Statutes of the United States, as amended. The first sentence of section 4 at type of jurisdiction is sufficient to meet the requirements of section 4661, and requires exclusive jurisdiction in the United States. Its repeal is recommended for this reason. The second sentence of section 4662 should be preserved, however, to insure the power of the several States to serve civil and criminal process within such sites already acquired under this act. The Committee recommends, however, that its application be broadened to all Federal lands and has therefore recommended that, as a codification matter, the new section be inserted in title 40.

The repeal of section 103 of title 4, United States Code, is recommended because the section is obsolete. The section gives to the President authority to procure the assent of the legislature of a state to the Federal purchase of land, so that the Federal Government shall acquire legislative jurisdiction over the property, where a purchase of land has been made without the prior consent of the State. Authority to acquire legislative jurisdiction over the previously acquired property now is adequately provided by section 355 of the Revised Statutes of the United States, as amended.

State legislation.--As has already been pointed out, the Committee is of the opinion that additional legislation on the part of many States, and amendments of State constitutions in several instances, will be required to allow relinquishment of unneeded Federal legislative jurisdiction to them by the United States. Additionally, it is the Committee's view that further State legislative action is indicated with respect to uniformity in State cession and consent statutes.

The States of Montana, North Dakota, South Dakota, and Washington, as has been indicated earlier, have in their constitutions pro-

visions for the exercise of exclusive jurisdiction by the United States to which these States may wish to give attention.

Uniform State cession and acceptance statute.--The Committee's study also has revealed that considerable disparities exist among the various States in their legislation pertaining to the cession of legislative jurisdiction to the United States. Some of these differences have been pointed out in an earlier part of this report. In view of the fact that the Federal Government's power to legislate for ceded areas is dependent initially upon a grant of consent in this respect by the State concerned, it is obvious under these circumstances that unilateral action on the part of the Federal Government directed toward sounder policies and practices in this field could be only partially successful. It is for this reason that the Committee invites to the attention of the States the desirability of their enactment of a uniform State cession and acceptance statute along the following lines; optional matter, to provide conformity with existing State practices, is included in brackets:

SECTION 1. (a) Whenever the United States shall desire to acquire legislative jurisdiction over any lands within this State and shall make application for that purpose, the Governor is authorized to cede to the United States such measure of jurisdiction, not exceeding that requested by the United States, as he may deem proper over all or any part of the lands as to which a cession of legislative jurisdiction is requested, reserving to the State such concurrent or partial jurisdiction as he may deem proper.

(b) Said application on behalf of the United States shall state in

particular the measure of jurisdiction desired and shall be accompanied by an accurate description of the lands over which such jurisdiction is desired and information as to which of such lands are then owned [or leased] by the United States.

(c) Said cession of jurisdiction shall become effective when it is accepted on behalf of the United States, which acceptance shall be indicated, in witting upon the instrument of cession, by an authorized official of the United States and [admitting it to record in the appropriate land records of the county in which such lands are situated] [filing with the Secretary of State].

Sec. 2. Notwithstanding any other provision of law, there are reserved over any lands as to which any legislative jurisdiction may be ceded to the United States pursuant to this act, the State's entire legislative jurisdiction with respect to taxation and that of each State agency, county, city, political subdivision, and public district of the State; the State entire legislative jurisdiction with respect to marriage, divorce, annulment, adoption, commitment of the mentally incompetent, and descent and distribution of property; concurrent power to enforce the criminal law; and the power to execute any process, civil or criminal law; and the power to execute any process, civil or criminal, issued under the authority of the State; nor shall any persons residing on such civil or political rights, including the right of suffrage, by reason of the cession of such jurisdiction to the United States.

Sec. 3. (a) Whenever the United States tenders to the State a relinquishment of all or part of the legislative jurisdiction theretofore acquired by it over lands within this State, the Governor is authorized to accept on behalf of the State the legislative jurisdiction so relinquished.

(b) The Governor shall indicate his acceptance of such relinquished legislative jurisdiction by a writing addressed to the head of the appropriate department or agency of the United States and such acceptance shall be effective when said writing is deposited in the United States mails.

The foregoing proposal, if enacted into law by the several States, when used in conjunction with the applicable Federal authority as it would exist after the enactment of the amendments recommended just, previously, would permit cooperative action on the part of appropriate Federal and State officials for the resolution of most of the manifold problems of both the Federal and State Governments, and of the residents of Federal areas, by the existence of Federal legislative jurisdiction over so many lands within the States.

The proposed statute has been drawn in the form in which it appears above in order to meet a number of needs which came to the attention of the Committee in the course of its study. The following comments in respect to certain of its specific provisions are considered appropriate: (a) The authority to make the actual cession of jurisdiction and to determine the measure thereof which should be ceded are confided to the Governor in order to permit an adjustment of the amount of jurisdiction which is ceded to the needs of the particular lands involved; the need for such discretion in some State official has been apparent throughout the Committee's study; (b) the amount of jurisdiction which the Governor may cede is limited to not more than what has been asked for on behalf of the Federal Government for the reason that it is obviously to the advantage of the State, the

United States, and the residents of the area, for the United States to acquire only the amount of jurisdiction sufficient to meet its needs; (c) provision is made for the cession of jurisdiction over lands not yet acquired by the United States to allow the continuance of the desirable practices followed by certain United States agencies of (1) determining in advance what jurisdiction is necessary for the purpose to which the lands are to be put and acquiring such lands only when such jurisdiction is obtainable, and (2) acquiring by a single cession from a State one type of jurisdiction over a large area eventually to become part of one Federal installation but for which the lands are to be acquired at different time or over a period of time; (d) provision is made for admission to record of all cessions of jurisdiction in order that the respective limits of State and Federal jurisdiction will be readily ascertainable; (e) by section 2 of the act certain irreducible minimums of authority are left in the States; as examination of the provisions of this section will reveal, the taxing power of the State and that of its political subdivisions is in no wise reduced, nor is the power to enforce the criminal law; and care has been exercised to preserve the rights and privilege of the residents

of ceded areas; and (f) the necessary provisions for acceptance of relinquished jurisdiction, mentioned earlier, have been made.

Summary.--It is the belief of the Committee that the need for the Federal and State legislation which has recommended is demonstrated by its study and in this report. With the enactment of such legislation, and with the revision by Federal agencies of their policies and practices relating to the acquisition or retention of legislative jurisdiction so that they are in conformity with the recommendations made in the report, the Committee is confident that most of the problems presently arising out of this subject could be resolved, to the great benefit of the General Government, the States and local governmental entities, residents of Federal areas, and the many others who are affected.

APPENDIX A

SUMMARY OF FEDERAL LANDHOLDING AGENCIES' DATA RELATED TO JURISDICTION

The questionnaires addressed to each of the 23 landholding agencies of the Federal Government produced a tremendous mass of information; reports from the larger agencies exceeded a thousand pages each. The numbers and areas of properties reported by the agencies were verified by the Committee against date set out in the Inventory Report on Federal Real Property in the United States as of December 31, 1953 (S. Doc. No. 32, 84th Cong., 1st sess.), and any discrepancies which might affect the accuracy of this study were reconciled by the agencies involved. While a later inventory report is now available (S. Doc. No. 100, 84th Cong., 2d sess.), it was published after the questionnaires related to this study had been completed.

The information which each of the landholding agencies transmitted to the committee concerning its properties, and the views indicated by each agency concerning the jurisdictional status its properties should have, are summarized below. References will be noted to questionnaire A, and questionnaire B; these relate, respectively, to the questionnaire addressed to each agency concerning its property in general, and to the similarly addressed questionnaire concerning individual properties of each agency in the States selected for sampling purposes. Questionnaire B elicited statistical facts concerning such matters as the number of nonmilitary residents and the number of children on each installation, and sought information on a number of other possible recurrent, day-to-day problems. These included such matters as access to local schools and other local governmental facilities, equality of privileges as compared with local residents, the maintenance of vital statistics, the availability of notarial services, the furnishing of police and fire protection, and garbage disposal.

The accuracy of some of the opinions expressed as to the relative advantages or disadvantages of the existing jurisdictional status should be measured against expressions on the matters by the Committee, since it must be recognized that the extent of knowledge as to what that status is, and the legal incidents relative thereto, varied with the correspondents.

DEPARTMENT OF THE TREASURY

Data from questionnaire A.--The three bureaus of the Treasury Department which supervise property outside of the District of Columbia have a total of approximately 1,219 installation, aggregating approximately 26,941.45 acres in area plus 67,266 square feet of office and storage space (Coast Guard: 1,049 installations aggregating 25,473 acres plus 144 installations (lifeboat stations) aggregation 977 acres; Customs: 20 installations aggregating 366.6 acres, and buildings totaling 43,444 square feet, of which 8,112 square feet are

located on land either leased or occupied by permit; and Mint: 6 installations aggregating 124.85 acres plus 630,822 square feet of office and storage space).

The property throughout the United States occupied by the Bureau of Customs and the Bureau of the Mint is all held under a proprietorial interest only, while property of the United States Coast Guard is variously held under each of the several types of legislative jurisdictional status and under a proprietorial interest. The jurisdictional status of Coast Guard lands, to the extent that it is known, is indicated to be as follows:

Property	Number of properties					
	Total number	Area (acres)	Exclu-sive	Partial	Con-current	Proprie-torial
Academy	1	61	1	.....	.....	
Air detachment	4	.....	.....	.....	.....	
Air station	9	864	2	.....	.....	
Base	22	228	9	.....	.....	7[1]
Depot	19	22	9	.....	.....	
Electronic engineering station	11	.....	.....	.....	.....	
Fog signal station	1	25	1	.....	.....	
Group office	4	.....	.....	.....	.....	
Lifeboat station	144	977	12	1	.....	131
Light attendant station	53	.....	.....	.....	.....	
Light station	321	4,912	144	.....	13	10
Loran transmitting station	10	283	3	.....	.....	
Mooring	12	.....	.....	.....	.....	
Radio beacon station	1	.....	.....	.....	.....	
Radio station	14	645	4	.....	.....	
Receiving center	1	430	1	.....	.....	
Supply center	1	67	1	.....	.....	
Supply depot	3	.....	.....	.....	.....	
Training station	1	429	1	.....	.....	
Yard	1	39	1	.....	.....	
Total	633	8,982	189	1	13	148

[1] Held in mixed status: Concurrent and proprietorial.

Since the jurisdictional status of many properties is unknown to the Coast Guard, it is impossible to determine the acreage held under each of the different types of jurisdiction.

Data from questionnaire B.--In the State of California the Treasury department has a total of 21 installations comprising 1,113.95 acres and 95,164 square feet of building space. Of these properties 19 belonging to the Coast Guard, constituting a total of 1,111.19 acres,

are reported to be under the exclusive legislative jurisdiction of the United States (although it appears that some of these may be within the definition of "partial" jurisdiction adopted for the instant study, in view of the practice of this State of reserving certain powers in making cessions). One property belonging to the mint, consisting of 2.76 acres and 95,164 feet of building space, is held in a proprietorial interest only status. The status of the additional property consisting of 7 acres held by the Coast Guard (Point Loma Light Station) is unreported. Despite the exclusive (or partial)

nature of most of the california installations, vital statistics are maintained by State or local authorities and local coroners investigate deaths occurring on the premises under unknown circumstances. Residing on Coast Guard properties are 172 persons other than military personnel. Twenty-one of the thirty-eight installations in the 12th Coast Guard District report that their residents are denied equal access with State residents to State colleges. All persons are indicated as otherwise having equal access to State governmental facilities and equal privileges under the State. Sixty-nine children residing on these installations attend State schools; of these, forty are children of military personnel and twenty-nine are children of civilians. Resident children are in all cases granted access to State schools; however, in the majority of cases it was reported that Federal funds in the form of grants-in-aid were paid to the State.

The Treasury Department manages no property owned by the United States in the state of Kansas.

In the state of virginia the coast Guard is the only agency of the Department reporting management of realty, a total of 50 properties aggregating 1,388.398 acres, 1.03 rods, and 18 perches. Twenty-six properties and a portion of an additional property, aggregating 18.729 acres, are reported as having a partial legislative jurisdiction status. One property, consisting of 0.42 acre, is held in a concurrent legislative jurisdiction status. Fourteen properties and portions of four are held in a proprietorial interest status. As to 3 properties and a portion of an additional property, records on jurisdictional status are unavailable; the area of only one such property (0.22 acre) is known. Vital statistics are not maintained on coast Guard reservations. There is no known general rule which the coroners in the state of Virginia follow apropos investigation of deaths occurring under unknown circumstances. There are nine civilian personnel residing on federal properties within the State. These persons acre granted equal voting rights, equal access to existing governmental facilities, and

equal privileges. Three children of civilian personnel attend State schools on an equal basis with State residents.

Agency views.--The Bureau of Customs and the Bureau of the Mint have experienced no difficulties in operating under a mere proprietorial interest and see no need for Federal legislative jurisdiction over their properties. While the Coast Guard likewise indicated no significant problems with any type of jurisdiction it initially stated an opinion that exclusive or concurrent legislative jurisdiction was best suited to its properties. This opinion was subsequently revised, and the Coast Guard has informally indicated to the Committee that a proprietorial interest only would suit its properties.

DEPARTMENT OF DEFENSE

a. Department of the Army.
b. Department of the Navy.
c. Department of the Air Force.

a. Department of the Army

Data from questionnaire A.--The number of properties owned by the United States and occupied, operated, or supervised by the Department of the Army is indicated to approximate 1,330. Of this number approximately 574 pertain to military installations and 756 to river and harbor improvements and flood-control projects. The Army reports that it does not have readily available information as to specific categories, acreage and type of jurisdiction in regard to river and harbor improvements and flood control. However, it has been the policy of the army not to request jurisdiction over such properties, and generally, they are held in a simple proprietorial interest. In regard to military properties, the categories, jurisdictional status, number and acreage are listed as set forth in the following table. It may be noted therefrom that while many of Army's properties are held in an exclusive legislative jurisdiction status (41 percent by number and 20 percent by acreage), similarly large quantities of its properties, of all categories, are held in a proprietorial interest only (30 percent by number and 46 percent by acreage), and considerable quantities in a partial or concurrent legislative jurisdictional status:

Data from questionnaire B.[1]--The acreage and jurisdictional status of properties held by the Department of the Army in Virginia, Kansas, and California are reported as follows:

	Total	Kansas	Virginia	California
Exclusive	67,695	9,563	34,888	23,244
Partial	97,875	74,327	.....	18,548
Concurrent	122,614	.....	122,614	.....
Proprietorial	1,010,026	.....	1,909	1,008,117
Total	1,263,210	83,890	159,411	1,049,909
Less arithmetical errors	-803	.....	-893	.....
Total	1,292,317	83,890	158,518	1,049,909

The designation of jurisdictional status supplied by the various reporting installations was used in every instance except that of Fort Leavenworth, which was changed by the committee from a reported exclusive jurisdiction to a partial legislative jurisdiction on the basis of precise information on this installation.

A general satisfaction of installation commanders with the jurisdictional status of installations held under exclusive (or partial approaching exclusive) Federal jurisdiction was reported. This general satisfaction extended, but in a markedly lesser degree, to all installations whatever their jurisdictional status. For industrial type installations there was indicated preference for a proprietorial interest status. With respect to other types of installations, in a number of instances where there was only a proprietorial interest it was suggested that a greater degree of jurisdiction be obtained by the United States, but generally no problems were indicated as arising out of the existing status. On the contrary, several advantages were variously cited as arising from such a status. The reasons given by the Army and by local commanders for retaining or obtaining exclusive legislative jurisdiction are mainly related to military control and security, and freedom of both bases and personnel from local interference and regulation. It appears, however, tat no serious problems with respect to these matters are

reported in the cases of the many Army installations which are under less than exclusive jurisdiction. In many cases where an exclusive jurisdiction status was urged for a proprietorial interest area it was nevertheless acknowledged that State and local authorities in fact have a "hands off" attitude with respect to Army operation of military establishments, and that no actual conflicts exist. In only one instance in which such a change was desired, where the installation is located in part on exclusive-

[1] These questionnaires were sent only to military installations. For the reasons set forth above in relation to questionnaire A, reliable information is difficult to obtain concerning the areas in the three selected States devoted to the civil functions of the Army.

jurisdiction land and in part on part on proprietorial-interest-only land, which are all administered uniformly, was there a definite indication of conflict, the degree of which was not stated. In other such cases, it was indicated, the Army post commander's fear of State or local interference was based on a "theoretical analysis" of possibilities, or on suppositions not based on actual experience. In still other cases the Army commander had an erroneous impression that an exclusive-jurisdiction status, as distinguished from a proprietorial-interest-only status, permitted him to exercise more control over civilians, including their arrest and final disposition of charges against them.

Where premises had differing legislative jurisdiction statuses, they were nonetheless administered in the same manner in all cases except one. In no instance were any problems reported as arising out of the differing statutes.

The number of residents other than armed forces personnel on Army premises in Virginia, Kansas, and California is approximately 20,991. On six installations there residents were denied an equal right with State residents to vote. On two of the installations at which residents are denied equal voting rights, Camp Cooks, Calif., and Branch United States Disciplinary Barracks, Lompoc, Calif., they are also reported to be denied access to State colleges without payment of a nonresident tuition fee, although these installations are reported as held under a proprietorial interest only. A denial of equal facilities was cited on four installations. Equal privileges were reported as denied in seven instances.

Resident children attending school were reported as follows: Children of armed forces personnel, 7,323; others, 1,416; total school children, 8,739. Seven installations reported that these children were not accepted in State schools on an equal basis with State residents. In six of these cases, State schools were the recipients of federal grants-in-aid; in the other instance, a separate school maintained on the base was supported jointly by State and Federal sources.

Vital statistics are maintained inmost instances by local authorities, regardless of the jurisdictional status of the property. However, 2 installations reported such statistics were no maintained; 9 installations reported such statistics were maintained by the federal Government.

Eighteen installations reported that a local coroner did not investigate deaths occurring on the premises; investigations were performed by the local coroner on 41 installations. For the most part

factors other than jurisdictional status of an installation determine whether or not a local coroner will conduct investigations.

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Services of a notary public were available on the premises in 33 of the 68 reporting installations. In those cases where notaries were not on the premises, they were located in areas ranging from immediately adjacent to the premises to 10 miles away.

Thirty installations reported a necessity for the services of a United States commissioner. Distances to the nearest commissioner ranged from one on base to 65 miles, with an average distance of about 17 miles.

Services of local police were reported as needed and rendered in 10 instances. In a number of instances local police would appear to operate on exclusive jurisdiction areas. such services were not needed in 57 cases. The Sierra Ordnance Depot, Calif., reports a past history of inability to obtain local police protection despite in 1942 local police authorities declined to assume jurisdiction over law violations on the depot on the ground that the status of a military reservation precluded the assumption of jurisdiction. In order to have some law enforcement, a United States commissioner was appointed to try violations of California law under the Assimilative Crimes act. The authority of the commissioner was challenged on several occasions. Not until 1955 was it possible for the Army to obtain partial jurisdiction over the area (which contained leased land) in order to clear the confused situation.

Fire protection was furnished by the Federal Government in 23 cases, local government in 9 cases, and reciprocally in 34 cases. The source of fire protection appeared in most instances to be more contingent upon factors such as the size and manpower of the installation, and the proximity and resources of the local community, than upon the legislative jurisdictional status of the properties involved.

The Army makes a special reference to the area occupied by the Pentagon. Since it appears that there is some uncertainty as to whether the United States is vested with exclusive or only concurrent jurisdiction over that part of the Pentagon and outside facilities as are located on land lying between the boundary line established between the District of Columbia and the Commonwealth of Virginia by the act of October 13, 1945 (58 Stat. 552), and the high-water mark as it existed on January 24, 1791, the question arises whether to seek a cession of exclusive jurisdiction over the area from the Commonwealth of Virginia or whether to retrocede concurrent jurisdiction over the area now under exclusive jurisdiction, since consistency in the status of both areas is desirable.

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Agency views.--The policy of the Department of the Army with respect to the acquisition of legislative jurisdiction has been for the Chief of Engineers to make ad hoc decisions on a request for the procurement of jurisdiction made by the using service. Where such decision is in favor of jurisdiction, the Corps of Engineers procures the maximum jurisdiction which the State will grant.

The Department of the Army indicates the desirability of providing authority to the Secretary of the Army for the adjustment of

the existing jurisdictional status of Army properties, but opposes any action on the basis of the instant study which would divest the United States of any jurisdiction over military properties which it now has.

b. Department of the Navy

Data from questionnaire A.--The Department of the Navy has a substantial inventory of real property (614 installations, comprising 3,417,174 acres), which property is predominantly held only in a proprietorial interest status, but a large number of installations are held under the exclusive legislative jurisdiction of the United States, and lesser numbers in a partial or concurrent jurisdictional status. The properties fall into 27 categories based on use--naval bases, depots, shipyards, industrial reserve facilities, ordnance plants, hospitals, radio stations, civilian and military housing, detention barracks, etc.; all but 1 of such categories include 1 or more exclusive jurisdiction installations, all but 3 minor categories of properties, which are used by the Marine Corps, include proprietorial interest only installations, all but 12 include concurrent jurisdiction installations, and all but 14 include partial jurisdiction installations. The numbers and total approximate areas of properties reported to be under the several types of jurisdiction are indicated in the following table:

Jurisdiction	Number	Acreage	Square Feet
Exclusive.....	266	1,065,698	87,000
Concurrent.....	55	214,821	.....
Partial.....	34	153,085	.....
Proprietorial.....	408	1,646,491	.....
Total.....	743[1]	3,100,095[2]	87,000

[1] The discrepancy in the number of parcels occurs from the fact that several parcels enjoy varying types of legislative jurisdiction.

[2] The Navy advises, on the basis of data full details of which were not furnished to the Committee, that this figure should be revised to 3,417,174 acres.

Data from questionnaire B.--The approximate number and acreage of the sites reported in the three States under specific consideration (Virginia, Kansas, and California) are as follows:

[Acres unless otherwise specified]

State	Number	Total area	Uncertain	Exclusive	Concurrent	Partial	Proprietorial
Virginia....	39	1,118,108	.....	41,322	3,633	.....	73,150
		220,000	.....	.....	.....	.....	320,000
Kansas.....	2	34,157	.....	4,157	.....	.....	.....
California..	67	42,435,154	.....	186,309	32	136,405	2,114,028
		393,418	2601.31	233,287	.....	.....	.....
		5,159	.....	.....	.....	.....	.....
		(6)	.....	.....	.....	.....	.....
Total.....	108	72,557,419	3601.31	231,788	3,665	3,665	2,187,178

In a few reports it was suggested that jurisdiction over housing,

particularly housing entirely for civilians, be retroceded to the States, and that the Federal Government maintain a proprietorial interest only. With only one exception all installations reported satisfaction with the housing units under their command which were held in a proprietorial interest. Local police, fire, etc., services, as well as rights of the residents such as voting, were the reasons given for the desirability of a proprietorial status for these housing units.

On the other hand, reports from local installations showed a general desire for more than proprietorial interest with respect to lands used for activities other than housing. Affirmative answers were received in almost all instances where the type of jurisdiction was the greatest obtainable under State law. Reports from 38 installations expressed the opinion that the present jurisdictional status of the installations was not the most suitable, in almost every such instance desiring the greatest amount of jurisdiction available to the Federal Government under the laws of the particular State. The reason most often assigned was that superior military security and control were possible under superior legislative jurisdictional status. It will be noted that the Navy Department its self does not concur in this theory. Despite the many recommendations for an upgrading in jurisdiction with respect to installations holding less than exclusive jurisdiction, few problems with local officials or disadvantages attributable to the existing status of the installations were reported. Most reports stressed the spirit of cooperation and harmony existing between the command and local authorities, local officials very generally have adopted a "hands-off" attitude with respect to naval properties, whatever the legislative jurisdiction status of such properties, rendering

only such service and assuming only such authority as are welcomed by the naval commanders. This is demonstrated by the fact that in almost all installations based on areas of land under two or more types of jurisdiction there is no areas of land under two or more types of jurisdiction there is no distinction made on the basis of jurisdiction in the administration of the several areas comprising the installation.

Approximately 37,595 residents were reported living on 52 installations. The figures ranged from 1 resident to 9,349. From the reports given it is not possible accurately to determine what proportion of such residents reside on lands under each of the varying types of jurisdiction.

The reports indicate that residents of 45 of the installations are allowed to vote in the State and that the right to vote has been denied to residents of 10 installations. All of the negative responses came from installations where the civilians resided on land under exclusive Federal jurisdiction. In many other instances, however, persons on such land were allowed to vote. Discrepancies were rampant between various installations in the State and ever between various installations within a single city.

There are 16,133 school children residing on naval lands in the 3 sample States. Of these, 13,684 are children of persons in the naval service and 2,449 are those of civilians. It is not possible from information made available to break down the number of school children by the legislative jurisdiction of the land on which they reside.

Resident children on 58 installations were reported as being accepted in State schools on an equal basis with State residents,

whereas the children living on 14 installations were denied this privilege. In all the cases in which a negative response was received either the local school district was receiving Federal grants-in-aid, or the installation was providing transportation to the school for the Federal children. In no reported instances were the children denied schooling. If formerly there were problems in this area, it would seem that, at least for the present, the Federal aid system has alleviated them almost entirely.

Equal use of facilities and equal privileges were accorded to residents of Federal enclaves almost without fail regardless of the jurisdiction over the land upon which they resided. Access to courts of divorce, adoption courts, mental institutions, and other incidents of State residency were reported denied in a few instances, but there nowhere appeared to be an overall State policy present, the results differing from locality to locality within the individual State and, indeed, differing at the same locality with respect to different facilities and privileges. (The Naval Auxiliary Air Station at El Centro, Calif., under exclusive jurisdiction, reported that access is allowed

to juvenile courts, divorce courts, adoption courts. On the other hand, residents are denied the right to serve as executors of administrators of local estates, as well as well as the right of probate within the State, and are refused the services of visiting nurses and access to State hospitals for the mentally ill. Such residents are allowed to vote.) There were no reported cases of denial of equal privileges, in fact some installations reported better-license laws.

In a substantial majority of the cases, vital statistics concerning civilians are taken and maintained by local authorities regardless of status of jurisdiction. Likewise the coroner investigates deaths of civilians. In most installations under exclusive jurisdiction and in some under other statuses, deaths of members of the naval service are investigated by Federal authorities. In several instances, however, it was reported that the local coroner was requested to investigate. Some two or three stations reported that naval authorities attached to the station had been deputized as coroners by local authorities and all investigations on the installation were conducted by such deputies.

The availability of notarial services was reported affirmatively in 41 instances, negatively in 62. Where no notary was on the post, such service were usually available within a short distance. Frequently these services were performed on land under exclusive Federal jurisdiction.

The services of a United States Commissioner were not required in 80 reporting cases, were required in 22. While many of the installations reporting no need were held under proprietorial interest only, many others in a different status relied upon local police or military regulations, and reported a need for a United States Commissioner rarely if at all.

Thirty installations reported a need for local police services, and in all except one case such services were available. Local police were usually utilized to render general police service in connection with naval housing, although other instances of their use, such as in connection with theft investigation and traffic control, were cited. Usually, but not always, the local police were not acting on land under exclusive jurisdiction. One installation reported that its

housing development, on exclusive jurisdiction land, was patrolled by local police under an agreement whereby the lessee company of the housing project made a payment in lieu of taxes to the of accommodating naval authorities, with respect to arrest of individuals for law violations occurring on other types of exclusive jurisdiction installations.

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One station, holding 507 acres exclusive and 10 acres proprietorial, reported that station police at the gate for formal charge, arrest, and prosecution. Presumably no attempt was made to determine the jurisdictional status of the land upon which the purported crime was committed. Sixty-eight installations reported no need for local police services. While most of these were located on exclusive jurisdiction land, several were not, but relied upon military policing. The local police appear to have almost completely respected the desires of installation commanders concerning the rendering of their services on military land.

Whether or not local fire protection was rendered does not appear to depend entirely upon the status of the land in question, but rather upon other factors such as size and character of the installation, proximity to local fire-fighting facilities, adequacy of local facilities, etc. The breakdown was as follows: Federal only, 34; local only, 19; reciprocal, 48. While a few of the reciprocal agreements, in consonance with the often-cited harmony and cooperation between local and Federal officials.

Agency views.--The policy of the Department of the Navy with regard to the acquisition of legislative jurisdiction has been to acquire no legislative jurisdiction unless the local commander makes a request for the acquisition of jurisdiction setting out his reasons therefor. If the Department determines on the basis of this request that Federal legislative jurisdiction is necessary or desirable, the Department procures the maximum jurisdiction permitted by general State cession statutes.

In view of the opinion of the Department of the Navy that the jurisdictional status of the site of an installation is immaterial insofar as any effect it may have upon the security and military control over the property and personnel of a command are concerned, it bases its view of the desirability of a particular type of jurisdiction in a general way upon the size and self-sufficiency of the installation. For large, self-sufficient bases exclusive (or partial approaching exclusive) jurisdiction is felt desirable. For small, non-self-sufficient installations concurrent jurisdiction (or proprietorial interest only as a second choice) is desirable. In all cases the determination would have to be made by an analysis of the problems of the particular installation and a weighing of the advantages and disadvantages of the various jurisdictional statuses, with housing areas being considered separately in arriving at the final decision.

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c. Department of the Air Force

Data from questionnaire A.--The department of the Air Force reports that it holds within the United States 189 primary

installations comprising 6,327,498 acres. Minor installations were not included in the report. Of the 6,327,498 acres under concurrent jurisdiction; 201,018 acres under partial jurisdiction; and 5,744,485 acres under a proprietorial interest. It is to be noted that over 90 percent of the acreage reported is held under a proprietorial interest only. The following table illustrates the current status of Air Force properties broken down by use and jurisdictional status:

* * * * * * * * * *

Data from questionnaire B.--The acreage and jurisdictional status of properties held by the Department of the Air Force in the three States of Virginia, Kansas, and California are reported as follows:

* * * * * * * * * *

The jurisdictional preference of the reporting installations is almost uniformly for exclusive Federal jurisdiction or for the highest degree of Federal jurisdiction obtainable under the applicable State statutes. With regularity, the reason assigned for the desirability of exclusive jurisdiction was based upon the security of and military control over the installation. Other reasons assigned were the nonapplicability of State liquor regulation, noninterference with the operation of post exchanges and similar Federal instrumentalities, Federal criminal enforcement, nontaxation of leasehold interests in

Wherry housing, and the impression that exclusive jurisdiction would perfect the installation rights as a riparian landholder.

The various installations report 10,692 residents, of which 1,754 are in Virginia, 12 in Kansas and 8,926 in California. Apparently the dependents of Armed Forces personal were not included in the total for Kansas since the answer to another question indicates a total of 758 children residing in Kansas.

Residents of these areas are generally accorded all the rights of residents of the State, with a few exceptions. Residents are not granted a right to vote at McConnell Air Force Base, Kans., and Beals Air Force Base, Calif. They are denied equal use of facilities at Topeka Air Force Base, Kans., and at Beals in California. All of these installations are held under exclusive or partial Federal legislative jurisdiction. Since California now grants complete political rights to residents of Federal areas within its borders, it appears that some error has been made by local officials in regard to the rights of residents at Beale Air Force Base.

Seven thousand one hundred and fifty-three children reside on Air Force installations within the three States. Children of military personnel in Virginia number 916, in Kansas 758, and in California 5,200. In addition, 279 children of civilians reside on Federal areas within California. All of the children are enabled to receive public education, with no reported difficulties. In many instances, however, the local school districts receive Federal grants-in-aid.

Notaries public were reported as available on base in 13 instances; on 7 bases notaries were not present. Where a notary was not situated on the installation, the distance to the nearest notary varied from one to 27 miles, the average distance being 8.5 miles.

The services of a United States commissioner are required in eight instances. The distance to the nearest commissioner varies from 1 on base to 55 miles distant. The average distance to the nearest

United States commissioner is approximately 23 miles. Fifteen installations reported that they had no requirement for the services of a United States commissioner.

The services of local police were required and rendered in eight instances. In two of these cases, the main function of local police was in traffic regulation. Six of the installations which reported the receiving of local police services are held under exclusive or partial Federal jurisdiction; the remaining two bases are held under concurrent jurisdiction. Fourteen installations reported no requirement for the services of local police.

Fire protection was rendered by Federal sources in 16 cases, locally in 2, and reciprocally in 5. Factors other than the jurisdictional status of the lands involved appear to determine the source of fire protection.

Agency views.--The policy of the Department of the Air Force with respect to the acquisition of legislative jurisdiction has been to acquire exclusive jurisdiction as a matter of course over all permanent installation as a matter of course over all permanent installations wherever State statutes permit, except for bombing and gunnery ranges, for which no jurisdiction is acquired. The relatively small percentage of Air Force properties having any Federal jurisdictional status is explained by the following factors: (1) Many permanent installations have only recently been so designated and time has not permitted the obtaining of Federal jurisdiction, (2) rapid enlargement of installations by land acquisition and a time lag in obtaining Federal jurisdiction, and (3) the largest Air Force acreage represents bombing and/or gunnery ranges; these are for the most part located in the Western States and are comprised in a large part of public domain land which is not generally covered by enabling legislation; also it has been deemed neither necessary nor desirable to obtain Federal jurisdiction over bombing ranges, as generally no personnel or equipment are permanently located on them.

The Department of the Air Force is of the apparent view that a form of partial legislative jurisdiction would be most desirable. The Department envisages a type of jurisdiction in which the civil and political rights of the Federal residents would not be disturbed and yet would vest in the Federal Government substantial powers. It feels that reservations by the States of authority to control fishing and hunting, regulate and license private businesses and the power of taxation would not materially affect the military function. The Department more recently has indicated a view that concurrent rather than exclusive legislative jurisdiction is that toward which it would probably lean.

DEPARTMENT OF JUSTICE

Data from questionnaire A.--The reports of the two agencies of the Department of Justice which occupy, operate, or supervise real property owned by the Federal Government in the several States indicate that they have 48 such properties, aggregating 25,534.58 acres (Immigration and Naturalization Service 17 properties, 68.48 acres; Bureau of Prisons 31 properties, 25,466.1 acres). The jurisdictional statuses of such properties are as follows:

* * * * * * * * * *

Data from questionnaire B.--Information reported by the Department of Justice agencies concerning the legislative jurisdictional status of their properties in the three States to which questionnaire B appertains may be summarized as follows:

* * * * * * * * * *

A total of approximately 333 persons, including approximately 120 children of school age, being Government employees or their families, reside on the Department's properties. These persons appear on the whole not to be discriminated against because of the status of the areas upon which they live. However, in instances the right to vote has been denied persons resident on lands under the exclusive (or partial) legislative jurisdiction of the United States. Indeed, it appears from information in the hands of the Committee that at least in the case of one installation of the Bureau of Prisons, at El Reno, Okla., the right to vote has been denied to residents although the installation would appear not to be within the legislative jurisdiction of the United States, the State having limited its cession of jurisdiction to the land involved for use of the land for military purposes only.

Agency views.--The Immigration and Naturalization Service has had a policy of not accepting jurisdiction over lands acquired for its purposes, and only in two instances, where lands were originally acquired by other agencies for other purposes, does the Service have lands over which the United States has legislative jurisdiction. The Service states that all its needs have been met under a proprietorial interest.

The Bureau of Prisons' practice with respect to the acquisition of legislative jurisdiction over its installations has in the past not been

uniform. The Bureau now feels, however, that concurrent jurisdiction would be the most suitable for all prison sites.

DEPARTMENT OF THE INTERIOR

A from questionnaire A.--The number of properties owned by the United States and occupied, operated, or supervised by the Department of the Interior approximates 1070 properties comprising over 215 million acres. The numbers of these properties under the various Bureaus of the Department are as follows:

Bureau:	Number of properties
National Park Service	161
Bureau of Reclamation	120
Fish and Wildlife Service	312
Bureau of Land Management	218
Bureau of Mines	25
Geological Survey	2
Southwestern Power Administration	128
Bonneville Power Administration	221

Bureau of Indian Affairs..... 101

Total..... 1,070

These properties are used for a number of purposes by the Department, the amounts devoted to these uses and the jurisdictional statutes of the land being indicated by the following table:

Character of Federal jurisdiction, classified by use
[In acres, with number of properties in parenthesis]

* * * * * * * * * * *

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Character of Federal jurisdiction, classified by use--Continued

[In acres, with number of properties in parenthesis]

* * * * * * * * * * *

[In square feet, with number of properties in parenthesis]

* * * * * * * * * * *

Data from questionnaire B.--The acreage and jurisdictional statuses of properties held by the bureaus of the Department of the Interior in the States of Virginia, Kansas and California are reported as follows:

* * * * * * * * * * *

A general satisfaction was evidenced in the status quo of jurisdiction by the individual reporting installations. The only discernible trend was the preference of some national parks toward a concurrent legislative jurisdiction, which, in the majority of cases, was less than the existing status. The main practical advantage found in concurrent jurisdiction is the right of the Federal Government to provide adequate policing of isolated regions where the State authorities are either unable or unwilling to perform such services.

Residing on these installations are found 2,132 persons, most of whom are in areas within the limits of national parks. In this respect, it should be pointed out that many of these residents are residing on

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lands which they own, but which are "inholdings" in national parks, plots within the exterior boundaries of the parks.

There were no reported instances in which residents were denied equal vote, equal privileges, or equal use of facilities.

There are 524 school children residing on lands held by the Department of the Interior in California, Kansas, and Virginia. All of these children appear to be admitted to State schools on an equal basis with State residents. Only two installations reported that local schools received Federal grants-in-aid, the remainder were silent on this matter.

Regardless of jurisdictional status, in all cases except one

vital statistics were maintained and related certificates issued by the State authorities. (one national military cemetery, however, reported that its record were maintained by the Federal Government.) Likewise, local coroners investigated any deaths occurring on the premises under unknown circumstances.

In almost all installations services of State notaries public were not available on the premises. Distances to the nearest notary public varied from one-fourth mile to 102 miles.

About half of the properties reported a need for the services of a United States commissioner. Distances to the nearest notary public varied from one in residence on the installation to 150 miles.

Most of the installations reported need of the services of local police and in all instances such services were rendered.

Fire protection was provided locally in 18 cases, by the Federal Government in 25, and reciprocally in 10 instances. The type of jurisdiction does not appear too relevant in determining the source of fire protection. Rather, such factors as size of the installation, size and resources of the surrounding localities, and remoteness of the installations are of paramount importance.

Agency views.--The policy of the Department of the Interior with respect to the acquisition of legislative jurisdiction over its properties and that the efficiency of Federal operation is not impaired by holding lands under a simple proprietorial interest. For certain national parks and monuments which cover vast areas and which are situated in remote regions of the country, partial jurisdiction is deemed necessary, although the Department recognizes that the State should have substantial authority in these federally owned areas. For certain wildlife refuges, where the problems seem to be similar, the Depart-

ment has indicated the possible desirability of a concurrent jurisdiction status.

DEPARTMENT OF AGRICULTURE

Data from questionnaire A.--The six agencies of the Department of Agriculture which operate or supervise real property owned by the United States have a total of 532 properties aggregating 168,351,577 acres plus 39,433 square feet of office space, making the Department one of the largest landholding agencies of the Government (second only to the Department of the Interior). While most of the Department of Agriculture's land is held in a status of proprietorial interest only, the Department has lands in each of the other categories defined by the Committee. The following table summarizes the jurisdictional status of the lands:

* * * * * * * * * * *

It may be notes, incidentally, that with respect to a certain number of other properties the United States has be statute assumed authority over wildlife but this action appears to constitute an exercise of power under some other clause of the Constitution rather than assumption of jurisdiction under article I, section 8, clause 17.

Date from questionnaire B.--Responses from Department of Agriculture installations in Virginia, Kansas, and California indicate that 4 agencies of the Department of Agriculture supervise a total of

53 properties aggregating 21,502,772 acres and an additional 27,500 square feet, in the 3 States involved. Most of this property is held in a proprietorial interest only status, without legislative jurisdiction (51 areas aggregating 21,468,437 acres), but 3 areas aggregating 4,336 acres are held under exclusive legislative jurisdiction, and a portion (30,000 acres) of 1 otherwise proprietorial interest only property is held under a partial jurisdiction status. The status of the lands in these three States is shown in the following table:

[The following table is incomplete.]

California:
- Agricultural Research Service:
  - Proprietorial
  - Exclusive
- Farmers Home Administration: Proprietorial
- Forest Service: Proprietorial
- Soil Conservation Service: Proprietorial

Subtotal:
- Proprietorial
- Exclusive

California total

Kansas:
- Forest Service: Proprietorial
- Farmers Home Administration: Proprietorial
- Soil Conservation Service: Proprietorial

Virginia:
- Agricultural Research Service:
- Farmers Home Administration: Proprietorial
- Forest Service:
  - Proprietorial
  - Partial

Subtotal:
- Proprietorial
- Exclusive
- Partial

Virginia total

3-State total:
- Proprietorial
- Exclusive
- Partial

Total, 3 States

[1] Plus 2,450 square feet of space.
[2] 1 portion.
[3] Plus 2,450 square feet office space.

A total of 6,431 residents (approximately) are on the properties,

including 1,328 children attending schools. While the great majority of residents are on Forest Service properties as to which the Federal Government has only a proprietorial interest, it appears that discriminations are not practiced by the States and local committees against the residents who are on other properties, and all resident children attend schools on an equal basis with other children.

It is noted that local police assistance is required and rendered from time to time on various properties, including some properties under the exclusive jurisdiction of the United States. A number of affirmative recommendations are made for proprietorial interest on the grounds that it expedites arrest and punishment of petty thieves by local authorities, and that local authorities under such a status can supervise the hunting of game. In a number of instances Federal authorities are not readily available to enforce law, and in some such cases law enforcement by local authorities has been reported by some installations as essential to the carrying out of their functions.

Agency views.--The Department of Agriculture is of the view that a proprietorial interest is sufficient to its needs as to all its properties. Consequently it is the policy of the Department to acquire no legislative jurisdiction over its land holdings.

DEPARTMENT OF COMMERCE

Data from questionnaire A.--The reports of the seven agencies of the Department of Commerce (Bureau of the Census, Civil Aeronautics Administration, Coast and Geodetic Survey, Maritime Administration, Bureau of Standards, Bureau of Public Roads, and Weather Bureau), which occupy, operate, or supervises real property owned by the Federal Government in the several States, indicate that together these agencies have 263 such properties, aggregating 32,688.68 acres, plus 2 such-properties containing 474,360 square feet of office and storage space. The property supervised by the Department of Commerce is spread through the United States, excepting only 10 States, and is used for general office and storage space, air navigation aids, airports, regional headquarters, housing, geophysical and meteorological observatories, laboratories and testing areas, shipyards, marine terminals, warehouses, maritime training stations, reserve fleet installations, equipment depots, flight strips, and highway rights-of-way. The legislative jurisdictional status of areas operated under the department of Commerce may be summarized as follows:

Jurisdiction	Number	Area	
		Unit	Amount
Exclusive.....	5	Acre.....	48.3
Do.....	2	Square feet...	(474,360)
Concurrent.....	None	.....	None
Partial.....	1	Acre.....	616
Proprietorial.....	251	.....do.....	31,623.64
Unknown.....	6	.....do.....	32,688.68
Total			

Data from questionnaire B.--Responses from Department of Commerce installations in Virginia, Kansas, and California concerning legislative jurisdictional status may be summarized as follows:

Jurisdiction	Number	Acreage
Virginia.....		
Unknown.....	1	187
Exclusive.....	None	None
Concurrent.....	None	None
Partial.....	1	616
Proprietorial..	8	3,045.93
Total.....	10	3,848.93
Kansas.....		
None.....	None	None
California.....		
Unknown.....	1	2.5
Exclusive.....	None	None
Concurrent.....	None	None
Partial.....	None	None
Proprietorial..	29	4,964.3
Total.....	30	4,967.3

The several agencies on the whole have found the legislative jurisdictional status of their properties satisfactory. The predomination proprietorial--interest--only jurisdiction is chiefly preferred because of the local police protection which it beings. However, in one such case the Bureau of Public Roads reports difficulty in procuring police services and suggests the desirability of concurrent jurisdiction for the area; the problem apparently arises because of some misunderstanding. The mentioned Bureau also suggests the desirability of changing the legislative jurisdictional status of four of its installations from exclusive to concurrent for the purpose of strengthening its position when local police or fire protection services are required.

Eleven residents, including two school children, are located upon premise of the Department of Commerce in Virginia and California. Such residents are indicated as having accorded to them all services and privileges usually rendered by State and local governments only to residents of the State involved.

The Civil Aeronautics Authority makes special reference to the area occupied by the Washington National Airport, the jurisdiction of which is indicated as being partial, Virginia having reserved the right (1) to tax certain motor fuel and lubricants, (2) to serve civil and criminal process, and (3) to regulate the manufacture, sale, and use of alcoholic beverages. CAA finds satisfactory the current legislative jurisdictional status of Washington National Airport, excepting an existing State-imposed prohibition on the use of alcoholic beverages other than light wines and beer. In this connection it points out that travelers using the airport come from all parts of the world, that many have a vastly different outlook than is represented by Virginia laws and that the prohibitions on use of alcohol at the airport

seem arbitrary. CAA recommends transfer to Federal jurisdiction of authority over this subject, but would have no objection to payment to Virginia of taxes on alcohol consumed on the premises.

Agency views--The Department of Commerce apparently has no departmental policy with respect to the acquisition of legislative jurisdiction. However, all of the landholding agencies of the Department have a policy of accepting only a proprietorial interest in lands acquired for their several purposes.

The land-acquiring agencies of the Department, with the exception of the Bureau of Public Roads, and the CAA with respect to the Washington National Airport, whose views have been indicated, are of the view that it is unnecessary for the proper performance of Federal functions to acquire any measure of legislative jurisdiction over their installation sites.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Date from questionnaire A.--The properties owned by the United States and occupied, operated, or supervised by agencies of the Department of Health, Education, and Welfare aggregate 3,848.063 acres outside the District of Columbia. The major part of this land is composed of hospitals, most of which are held under exclusive Federal jurisdiction. The status of quarantine stations, which are located on land aggregating 88.8 acres, is for the most part unknown to the Department. The various agencies of the Department also occupy office space i buildings held by other Federal agencies. The jurisdictional status of these lands in indicated by the following table:

[Acres]

	Total	Exclusive	Partial	Proprietorial	Unknown
St. Elizabeth Hospital, Maryland...	307.0	307.0			
Public Health Service:					
Quarantine stations.....	88.8	.3		6.9	81.6
Hospitals.....	2,942.413	2,917.034	8.679	15.4	1.3
Communicable disease centers...	147.0		27.0	120.0	
National Institutes of Health..	362.85	306.2	35.15	21.5	
Total.....	3,848.063	3,530.534	70.829	163.8	82.9

Data from questionnaire B.--The only bureau of the Department of Health, Education, and Welfare which supervises federally owned property in any of the 3 States covered by this questionnaire is the Bureau of Medical Services, which has 4 properties in California and Virginia, 2 being in each State. Al such property is acquired and the status thereof is shown in the following table:

* * * * * * * * * * * * *

A general satisfaction with the jurisdictional status quo was reported. Among the advantages of exclusive jurisdiction are listed the following: Federal property is not subject to State taxation; automobiles of personnel living on the reservation not subject to local taxes; disposition of personal effects upon death of patient

according to departmental regulations rather than relinquishment of such effects to the local public administrator. Advantages accruing from holding property under partial jurisdiction and proprietorial interest include local fire and police protection, lectures on fire prevention, and trash collection.

There are 125 residents and 29 school children residing on the lands in question, 63 residents (12 children) in Virginia, and 62 residents (17 children) in California. The rights of State residency appear to be granted in every case: equal vote, equal schooling, equal privileges and equal use of facilities.

Vital statistics are maintained locally in all instances; the local coroner investigates deaths on three reservations, on the fourth such functions are performed by military authorities.

Notaries are available on the premises in two instances. Where not on the premises they were available at a short distance.

Services of a United States commissioner are stated to be required, and available, only at the San Francisco hospital.

Local police services are reported required in 2 instances, and available in only 1 of these cases. It is desired that such services be made available at Norfolk (exclusive jurisdiction, reports that local police investigate thefts and remove disorderly persons from the premises.

Fire protection is available locally on three premise; on the fourth, military authorities provide such services.

Agency views.--The Department of Health, Education, and Welfare indicates that prior to this study it had not formulated or expressed its views on appropriate jurisdictional status for the areas it occupies. For this and other reasons the practices of the subordinate agencies of the Department have varied with respect to the

acquisition of legislative jurisdiction. The National Institutes of Health and the Bureau of Medical Services, which manage approximately nine-tenths of the Departments's land holdings have acquired exclusive (or partial) jurisdiction over essentially all of their installations. The practice of the other agencies has not been uniform. All agencies seem to be reasonably satisfied with the jurisdictional status quo. The Department recently has come to the view that a proprietorial interest is most desirable for the large bulk of its properties, and that a concurrent jurisdiction status is more desirable in a relatively few of its institutions where special problems exist with repeat to law enforcement.

ATOMIC ENERGY COMMISSION

Data from questionnaire A.--The Atomic Energy Commission operates 35 properties totaling 1,605,817.36 acres. These very in size from half-acre laboratories to 430,248-acre testing stations. The jurisdictional status of these properties is as follows:

* *

Date from questionnaire B.--The Atomic Energy Commission occupies two properties in the State of California, and none in Virginia or Kansas. The 2 installations cover approximately 34,905 acres, of which 24,462 acres were withdrawn from the public domain, and 10,443 acres acquired land; 34,224 acres are held in a proprietorial interest

only, and 681 acres under partial jurisdictional status.

One of the installations (partial jurisdiction) has no residents, another (proprietorial) 120, with 15 children of military personnel and 18 of civilians. These persons were allowed equal vote, equal use of State and local facilities, and equal privileges, and their children were given equal schooling, wit persons domiciled in the State.

Vital statistics were maintained by local authorities and investigations of deaths occurring on the premises were undertaken by the local coroner.

Notaries were available at 1 installation and were 24 miles distant at the other.

The installation held in a proprietorial interest only reported no need for a United States commissioner; the installation under partial

legislative jurisdiction replied affirmatively to such need and reported that a United States commissioner was available 40 miles from the installation.

In the areas held in a proprietorial interest only, police functions are performed by hired guards who have been deputized as sheriffs by the local authorities. In the areas under partial jurisdiction, police functions are performed by guards who are members of the California State Highway Patrol. While the Commission indicates that it does not feel it necessary that guards have such local status, such status is customary policy with the University of California, a State corporation which operates the installation. It may be noted that the status apparently would give no authority to the guards, beyond that possessed by citizens generally, with respect to making arrests in this area.

In both instances, fire protection is Federal. The installation which was situated nearer to local communities had verbal reciprocal agreements with these communities.

Agency views.--The policy of the Atomic Energy Commission has been to acquire no legislative jurisdiction. Indeed, in the case of certain lands acquired from other Federal agencies which were subject to the exclusive jurisdiction of the United States, the Commission has sponsored legislation which allowed it to retrocede jurisdiction to the States.

The Atomic Energy Commission has found that a proprietorial interest only is entirely satisfactory for all categories of property operated by that agency. For properties on which communities are located the Commission considers that a proprietorial interest only offers distinct advantages over other jurisdictional categories.

CENTRAL INTELLIGENCE AGENCY

Data from questionnaire A.--The Central Intelligence Agency reports that it has two properties, both used for foreign radio monitoring. These properties cover 579.3 acres of acquired land, all of which are held in a simple proprietorial interest, although greater jurisdiction could have been obtained under the applicable State laws.

Data from questionnaire B.--The Central Intelligence Agency operates only 1 property located in the 3 selected States, that one being in California. This is a foreign radio monitoring station on 483 acres of acquired land, all held under a proprietorial interest

only. A broader jurisdiction could have been accepted under the laws of California.

The California station reports that, "We have not experienced known disadvantage because of the application of State and local building, fire and health regulations, or other State or local law. Arrangements with local authorities and efficiency of administration doubtless have been furthered by our compliance with local pattern."

There are no residents on the California property, hence no vital statistics. Likewise, there has never been an occasion to use the service of a coroner.

A notary public is not available; the nearest one is situated about 8 miles away.

There is believed no need for the services of a United States Commissioner in the administration of the premises.

Services of State police have not been needed, but it is understood that they will be furnished if needed.

Fire protection is provided by the Central Intelligence Agency. No reciprocal arrangements with nearby localities are reported.

Agency views.--The policy of the Central Intelligence Agency with respect to the acquisition of legislative jurisdiction has been to acquire no jurisdiction over any of its properties.

Since, in the view of the Agency, the status of proprietorial--interest--only is not inconsistent with high security standards, it favors a proprietorial interest status for all its properties.

FEDERAL COMMUNICATIONS COMMISSION

Data from questionnaire A.--The Federal Communications Commission reports that it operates 12 properties having an area of 1,715.45 acres. All 12 properties are used as radio monitoring stations. Of this acreage 87.27 is stated to be under the exclusive jurisdiction of the United States, and the remaining 1,628.18 acres are under a simple proprietorial interest only.

Data from questionnaire B.--For radio monitoring purposes, the Commission holds 190 acres of acquired land in a proprietorial interest in California. It also maintains 7,700 square feet of office space in that State. In the State of Virginia it occupies 1,020 square feet of office space. It neither holds, supervises, nor uses any land in Kansas.

The Commission feels that the proprietorial status of its California lands is adequate for the purposes for which they are held. It notes that no particular disadvantages, problems, or advantages have arisen from the application of State or local laws.

There are no residents on the premises.

Should the occasion arise, a local coroner would investigate deaths, and records of vital statistics would be kept by the local authorities.

Notaries are available at only one of the California monitoring stations.

Generally at the monitoring stations there is no need for the

services of a United States commissioner. However, at the various district offices such services are occasionally necessary in connection with enforcement matters.

Agency views.--Since 1940 it has been the policy of the Commission not to obtain any measure of legislative jurisdiction over its land acquisitions.

It is the view of the Commission a proprietorial interest only is wholly sufficient for the performance of fall its Federal functions.

It is the view of the Commission a proprietorial interest only is wholly sufficient for the performance of all its Federal functions.

GENERAL SERVICES ADMINISTRATION

Date from questionnaire A.--The General Services Administration, as the manager of Federal buildings throughout the United States used by various Federal agencies for various purposes, including predominantly post offices and general office space, supervises a much larger number of individual pro(3,9904) than any other agency of the United States, more than a third (by number) of all properties owned by the Federal Government. The use and description of the 3,904 properties reported by General Services Administration, including the acreage and the jurisdictional status of the holdings are presented in the following chart:

While the area GSA properties held in each jurisdictional status is not specified in the GSA report, it is indicated that 3,616 properties (92.6 percent) are held in an exclusive jurisdiction status, 32 properties (0.8 percent) in a concurrent jurisdictional status, 243 (6.2 percent) in a partial jurisdiction status, and 13 (0.4 percent) in a proprietorial interest only status. By applying these percentages across the board to the total areas of its properties in each of the categories (buildings, urban land, and rural land) reported by GSA the following results are obtained:

* * * * * * *

Data from questionnaire B.--The areas and jurisdictional statuses of General Services Administration properties in the States of Virginia, Kansas, and California, as to which reasonably detailed information was furnished, are as indicated by the following table:

* * * * * * *

Individual General Services Administration installations in California (29 in number), the legislative jurisdictional status of which is known, whatever that jurisdictional status, without exception indicate that a proprietorial interest status is the most desirable for the installation involved. Individual installations in Virginia (15 in number) the jurisdictional status of which is known, nearly all being in an exclusive status, are approximately evenly divided on whether that is the most desirable status, with half of the installations favoring lessening the status to one under which the State would be authorized and required to render police and fire services. Individual installations in Kansas (6 in number) the jurisdictional status of which is known, all but 1 recently acquired property being in an

exclusive status, consider exclusive jurisdiction the most desirable status.

Only one installation (Tecale, Calif.) indicated that there were any residents on the area. This installation reported a total of 10 residents and no children. Although the installation is held under exclusive jurisdiction, the report indicated that equal schooling was available. It likewise disclosed that these residents were granted equal privileges and equal use of facilities.

In a substantial majority of the cases, vital statistics are taken and maintained by local authorities regardless of the status of cases no occasion has arisen requiring services of a coroner. Only 3 reports show that a local coroner investigates deaths, in 1 instance by contract with the installation, which had an exclusive jurisdiction status.

Availability of notarial services was reported affirmatively in 20 instances and negatively in 30 cases. This question was not answered in 16 reports. Where no notary was on the installation such services were generally available within a short distance. In 13 cases these services were performed on areas under exclusive Federal jurisdiction, notwithstanding the questionable validity of such notarizations.

Services of a United States commissioner were required in only 4 instances and a negative report was received in 47 cases. In the four cases requiring the services of a United States commissioner, such services were available in the same building.

Twenty-seven installations reported a need for local police services while 24 installations indicated no need for such services. In none of the 27 reports indicating a need for local police services was there any indication that such services were in fact rendered. However, 6 installations reported that the local police were reluctant to make arrests or to quell disturbances on the area, thus indicating that services were rendered in part.

Whether or not local fire protection was rendered does not appear to depend upon the jurisdictional status of the land in question. This is substantiated by the fact that 50 installations, 26 of which are held under exclusive Federal jurisdiction, reported that local authorities furnished fire protection for the area. Only two installations reported that such protection was rendered by the Federal Government, and no report disclosed a reciprocal arrangement.

Agency views.--The apparent practice of General Services Administration and its predecessor agencies with respect to the acquisition of legislative jurisdiction was until about 1947 to obtain exclusive jurisdiction over all properties acquired, without reference to the

need of the Federal agencies which might occupy the property. The practice subsequent to that time has not been made known to the Committee but from the facts furnished the Committee it is surmised that exclusive jurisdiction is almost uniformly required.

The General Services Administration did not in the first instance express any agency opinion as to the desirability of any particular measure of legislative jurisdiction. The opinion among regional

counsel, whose views were forwarded, was divided. Among those who had little or no experience with any from of legislative jurisdiction other than exclusive, the consensus was to maintain the status quo. Among those who had substantial experience with lesser forms of jurisdiction the consensus was in favor of concurrent jurisdiction or a proprietorial interest only. Later, the General Services Administration expressed the view that with amendment of existing legislation so as to permit appointment of special police without reference to jurisdictional status a proprietorial interest only would be sufficient for its properties. In the absence of such amendment, a concurrent legislative jurisdiction status would be desirable for properties requiring special police service, and a proprietorial interest for others.

HOUSING AND HOME FINANCE AGENCY

Date from questionnaire A.--The only subagency of the Housing and Home Finance Agency which occupies, operates, or supervises properties of a type to bring them within the cognizance of this Committee is the Public Housing Administration. That Administration holds an estimated 17,205.28 acres (plus certain unascertained acreage) of federally owned land, on which are located 403 projects, with approximately 121,879 housing units, of which are approximately 79,263 are occupied. Some of these projects are located in part on leased lands, but the leased land is not included in the mentioned acreage. In addition, the Public Housing Administration is in charge of and operates housing projects situated on land owned by the United States which is under the supervision of other Government agencies, particularly the Department of Defense. The jurisdictional status of nearly all of this acreage is proprietorial.

Data from questionnaire B.--In the three States to which the Committee's questionnaire B pertains (California, Kansas, and Virginia) the Agency holds something over 7,708 acres of land, principally under a proprietorial interest only status, on which are located 74 housing projects.

In California, Kansas, and Virginia, a total of 42,685 children are resident on land of the Agency; 16,263 of this total are children of civilians, and 26,422 are children of military personnel.

No report is made of any practice by States or municipalities of discrimination against residents of such of these properties as are under a proprietorial jurisdictional status with respect to voting or other rights and privileges generally accorded to State residents. Some such discriminations are indicated as having been practiced, at least in Kansas, with respect to residents of areas under the exclusive legislative jurisdiction of the United States. It appears, however, that in most instances land in Kansas and elsewhere utilized for housing projects by the Agency, though formerly under the exclusive legislative jurisdiction of the State (because of a provision of the Lanham Act (42 U.S.C. 1547)). California, pursuant to State judicial decisions, apparently permits the full exercise of civil rights and privileges by residents of Federal housing projects. All housing now held by the Agency in Virginia is in a proprietorial interest only status and no question of denial of civil rights or privileges arises.

Agency views.--In the view of the Housing and Home Finance Agency

there is no need for the acquisition of legislative jurisdiction over Federal housing projects and the practice of the Agency has been to acquire none.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Data from questionnaire A.--The number of properties owned by the United States and occupied, operated, or supervised by the International Boundary and Water Commission is 7, comprising 99,284 acres. The jurisdictional status of these lands is reflected in the following table:

* * * * * * *

Data from questionnaire B.--As the United States does not hold title to land in Virginia, Kansas, or California under the supervision of the Commission, there were no responses to questionnaire B Agency views.--It is the opinion of the commissioner that there is no need for Federal legislative jurisdiction with respect to the various categories of Federal lands operated by the agency.

TENNESSEE VALLEY AUTHORITY

Data from questionnaire A.--The properties owned by the United States and occupied, operated, or supervised by the Tennessee Valley Authority number 487 aggregating 761,226 acres of land, plus 158,634 square feet of office space in 3 buildings. Nearly 98 percent of the total acreage of Tennessee Valley Authority properties is accounted for by 38 dam and reservoir sites, but substantial areas are utilized for steam plants, transmission substations, radio stations and microwave links, general offices, field headquarters, chemical plants, phosphate mining, river terminate, tree crop nurseries, garages, general service reservations, quarry sites and tributary watershed erosion control.

The jurisdictional status of these lands is an indicated in the table following:

* * * * * * *

Date from questionnaire B.--Of the three States to which questionnaire B pertains, Tennessee Valley Authority has property in only 1, Virginia, in which are located 4 installations consisting of part of a reservoir, 2 transmission substations, and transmission line, with a total area of 1,211 acres, all of which are in a proprietorial--interest--only status.

The United States Forest Service gives fire protection to certain of the premises, with additional such protection available from State authorities. The other premises are given fire protection by a neighboring municipality, on a reimbursable basis for any services actually rendered.

Police services which may be required with respect to any of the premises from time to time, and such other governmental services as may be needed in the case of drowning in the reservoirs are furnished by local authorities.

The premises have no residents, and only one employee, and have no requirement for any governmental services other than those

mentioned. The Tennessee Valley Authority indicates that no problems arise out of the fact that the United States has only a proprietorial interest in these premises, with general legislative jurisdiction left in the State, and it considers this jurisdictional status as best suited tot he premises.

Agency views.--The Tennessee Valley Authority has policy of not accepting legislative jurisdiction over lands acquired for its purposes, and the United States holds such jurisdiction over only such of Tennessee Valley Authority's property as was acquired from other Federal agencies.

UNITED STATES INFORMATION AGENCY

Data from questionnaire A.--The United States Information Agency holds five properties, all of which are used for radio transmitter purposes. These properties total 5,229.5 acres, all held in a proprietorial capacity by the United States. It is not stated whether these lands were in the public domain or were acquired.

Data from questionnaire B.--The United States Information Agency holds 2 properties in the State of California, each comprising 640 acres. These 1,280 acres of acquired land are held in a proprietorial interest, and both are used for radio transmitters. No lands are held by the agency in Kansas or Virginia.

These installations feel that a proprietorial status is best suited for their purposes. They do not specify any reasons for this belief, however. Local laws and regulations, they report, have created neither disadvantages and problems nor advantages.

There are no residents on either of these properties. Notaries are located within 1 and 5 miles of the 2 installations.

The services of a United States commissioner are not required. Likewise there is no need for local police services.

Agency views.--In the view of the United States Information Agency a proprietorial--interest--only status is most suitable for its properties. Consequently, the practice of that agency has been to acquire no legislative jurisdiction over the sites of its installations.

VETERANS' ADMINISTRATION

Data from questionnaire A.--The properties owned by the United States and occupied, operated, or supervised by the Veterans' Administration number 176 installations, plus 14 vacant installation sites, and are located in all 48 States. The areas occupied by these units in the States vary in size from 3 acres to 2,367 acres, with an average area of 230 acres, and a total area of 43,874 acres. The numbers and total approximate areas of properties reported to be under the several types of jurisdiction are indicated in the following table:

* * * * * * * * * *

In addition, the Veterans' Administration reports occupancy of one parcel, consisting of 24.04 acres, owned by the Departments of the Army and Air Force, subject to exclusive jurisdiction, and 1 parcel, consisting of 96.2 acres, which may be subject to either exclusive or partial jurisdiction.

Data from questionnaire B.--The Veterans' Administration reported 3 properties in Virginia (totaling 687 acres), 3 in Kansas (totaling 1,117 acres), and 10 in California, including a vacant site of 208 acres (totaling 2,173 acres). These landholding constitute 5 percent of the total holdings reported by the Veterans' Administration, and no reason appears why they should not constitute a faire sample of all Veterans' Administration properties. The following table summarizes certain information concerning the properties in the 3 States. The meanings of the letters following the jurisdictional designations are explained in the matter following the table.

Location	Area	Jurisdiction
Virginia:		
Kecoughtan		
Richmond		
Roanoke		
Kansas:		
Topeka:		
2 tracts		
2d tract		
Wadsworth		
Wichita		
California:		
Livermore		
Los Angeles		
Oakland		
Fresno		
Long Beach		
Palo Alto		
San Fernando		
San Francisco		

The letters in the last column of the table represent the several types of jurisdiction as defined by the Committee: a=exclusive; b=concurrent; c=partial; and d=proprietorial interest only. The letter or letters before the first comma after each spelled-out specification of jurisdiction in the table indicate the view of the Assistant Administrator for Construction, Veterans' Administration, ass to the character of the jurisdiction of the United States over the piece of property involved; the letter or letters between the first two commas indicate the view of the manager of the establishment as to the jurisdiction had over the property; the next letter or set of letters indicates

the view of the General Counsel of the Veterans' Administration; and the last letter or set of letters indicates the view of the Committee staff. Of considerable significance is deemed the fact that in only 6 of the 14 cases analyzed did all 4 parties agree on the character of the jurisdiction held by the United States.

The establishment managers expressed nearly 100 percent

satisfaction with the jurisdictional status had by the establishments under their supervision, whatever that status might be. In one instance only did the manager of an establishment suggest the desirability of a change in its status, from exclusive to concurrent jurisdiction.

The 14 reported installations each have from 14 to 676 more or less permanent residents. The total is 2,2337 of whom 175 are children of school age. In addition, of course, there are many thousands of persons on these installations as patients and similar inhabitants.

It is indicated by the returns that at 11 of the installations the permanent residents are permitted to vote in State elections on the basis of their residence on the installation involved, whatever the jurisdictional status of such installation may be. This privilege is denied to residents of only three installations.

With respect to every installation it is indicated that children are accepted at local public schools on the same basis as State residents, and in only one case is it indicated that the school district involved receives Federal assistance (W) and in one case that the children are given Federal transportation to the school (Livermore).

In all but two instances it is reported that residents of the federal areas receive equal use of State and local governmental facilities and equal privileges with persons domiciled in the State involved. In the two instances which are exceptions it is indicated in one (Kecoughtan) simply that residents have access to governmental facilities furnished by local and State governments but are not granted other privileges usually accorded only to persons domiciled in the State, such discriminations in practice have not been applied against residents of the Federal installation involved, although doubt is expressed as to whether a discrimination might not applied in certain instances.

In every instance agencies of the appropriate city, county, or State, maintain vital statistics for the Veterans' Administration installations which reported to the Committee. In all but three cases the local coroner investigates deaths occurring on the premises under unknown circumstances; in only one of such cases the FBI investigates (Los Angeles), in another case the circumstances are made known to the coroner and there apparently exists complete cooperation be-

tween him and the installation authorities, although he has not conducted a personal investigation in many years (Kecoughtan), and in the third case no explanation is given beyond the fact that the local coroner does not conduct investigations in connection with such deaths.

In all but two cases services of a State notary are available on the premises, frequently furnished by an employee of the Veterans' Administration.

In three instances where the United States has exclusive jurisdiction with respect to punishment for crimes (Palo Alto, San Fernando, and San Francisco), the manager indicated that there was no requirement for the services of a United States commissioner in the administration of the premises. This may be explained by the fact that in these 3 instances, and in 6 others, services are rendered to the premises by local police, who presumably utilize the local system of judicial administration in processing offenders against the laws. Another explanation may lie in the sometimes considerable distance of

installations from the nearest commissioner, who may be as for as 35 miles away (Livermore). In 1 of the only 5 cases in which local police do not render services (Roanke) the manager suggests the advisability of a change in the status of his installation from exclusive to concurrent jurisdiction.

In 9 of the 14 reporting cases the Federal Government maintains fire-fighting equipment, but in each instance such equipment apparently is inadequate to cover all possible emergencies, since in each instance arrangements have been made on a reciprocal or other basis for assistance from local municipal or other fire-fighting equipment. In the five other cases fire-fighting protection is furnished only by equipment of the local municipality.

Agency views.--The policy of the Veterans' Administration with respect to the acquisition of legislative jurisdiction has for many years been to acquire exclusive jurisdiction where possible, except as to office buildings and some other types of buildings located in cities.

It was the consensus of the Administration that exclusive Federal legislative jurisdiction except as to some urban buildings in general best suits the requirements of the Veterans' Administration, although in some specific instances certain rights should be had by the States on a concurrent basis.

MISCELLANEOUS AGENCIES

Various agencies have reported to the Interdepartmental Committee that their landholding, if any, either were insubstantial or were administered or controlled by other Government agencies. Accordingly, report from these agencies are summarized together.

The following agencies reported that they administered or controlled no real estate within the purview of the study:

(a) Arlington Memorial Amphitheater Commission.
(b) National Capital Planning Commission.
(c) Rubber Producing Facilities Disposal Commission.
(d) Office of Defense Mobilization.
(e) Farm Credit Administration, including Government-owned corporate units thereunder.

The following agencies reported that they occupied some property, generally office space, which was controlled and administered by other agencies. These latter agencies have presumably included the amounts thereof in their reports:

(a) Department of Labor.
(b) Railroad Retirement Board.
(c) Federal Civil Defense Administration.
(d) Department of State.
(e) Federal Power Commission.
(f) Civil Aeronautics Board.
(g) Small Business Administration.
(h) Post Office Department.

The following agency reported relatively small landholding for which it is charged with the responsibilities of control and administration:

National Advisory Committee for Aeronautics. The extent of and types of jurisdiction relative to holdings of NACA can be summarized

as follow:

Jurisdiction	Number of properties	Area
Exclusive.....		
Concurrent.....		
Partial.....		
Proprietorial..		

[1] Includes 67.77 acres held by permit from Department of the Navy.
[2] Includes 200 acres held by permit from Department of the Air Force.

In addition NACA occupies 16,000 square feet of space on lease from the Department of Defense (Air Force), for which no jurisdictional status was specified. The agency holds 8,869 acres in Virginia under concurrent jurisdiction, 3,937 acres in California under exclusive jurisdiction, and no acreage in Kansas.

The agencies listed in the immediately preceding paragraphs which occupied property were unanimous in stating that no difficulties had arisen with respect to the jurisdictional status under which they held their properties. Accordingly, no agency considered itself in a posi-

tion to comment upon the desirability of one type of Federal jurisdiction rather than another.

The St. Lawrence Seaway Corporation, in an interim reply to the Committee, reported that the land acquisition program on behalf of the Corporation had been completed and that the Corporation itself was not as yet operating any works upon the St. Lawrence River. The reply further stated that while the officers and staff of that agency had been discussing for some time the various problems which might arise in connection with security, search, and seizure on the St. Lawrence River within the boundaries of the seaway, police jurisdiction along the locks and canals of the seaway, and similar problems, the Corporation had not as yet arrived at a policy determination with respect to these matters.

Tables I, II, and III, which follow, summarize some of the information obtained from the agencies through questionnaires A and B. Table I contains information as to the amount of real properly held countrywide by Federal agencies and its legislative jurisdictional status. Table II contains similar information with respect to Federal real property located in the States of Virginia, Kansas, and California. Table III reports the number of residents (other than persons in the military service and inmates of institutions) and the number of children living on installations of the various Federal agencies in the three States concerning which information was sought.

APPENDIX B

PART A. STATE CONSTITUTIONAL PROVISIONS AND STATUTES OF GENERAL EFFECT RELATING TO THE ACQUISITION OF LEGISLATIVE JURISDICTION BY THE UNITED STATES

ALABAMA

The Code of Alabama (adopted by act of the Legislature of Alabama, approved July 2, 1940) title 59, sections--

Sec. 1. (3147) (626) (19) (19) (22) (24) The United States may acquire lands.--The United States may acquire and hold lands within the limits of this state, for forts, magazines, arsenals, dockyards, and other needful buildings, or either of them, as contemplated and provided by the constitution of the United States, which purchase may be made by contract with the owners, or as hereinafter provided. In like manner the United States may acquire and hold lands, rights of way, and material needed in maintaining, operating, or prosecuting works for the improvement of rivers and harbors within this state.

Sec.3. (3162) (2428) (629) (22) (22) Cession of sites covered by navigable waters.--Whenever the United States desires to acquire title to land belonging to land belonging to this state, and covered by the navigable water of the United States, and within the limits of this state, for the site of a lighthouse, beacon, or other aid to navigation, and applications made therefor by a duly authorized agent of the United States, describing the site required for one of the purpose aforesaid, then the governor of the state may convey the title to the United States, and may also cede to the United States such jurisdiction over the same as may be necessary for the purposes of the United States; and upon like application the governor may convey to the United States the title to any land belonging to this state and covered by the navigable waters of the United States upon which any lighthouse or other aid to navigation has heretofore been erected, and may also cede to the United States such jurisdiction over the same as may be necessary for the purpose of the United States; but no single tract shall contain more than ten acres.

Sec. 18 (3161) (628) (21) (21) (24) (23) Governor to cede jurisdiction; restriction.--The governor, upon application made to

him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of title in the United States, describing the lands, is authorized on the part of the state by patent to be recorded in the office of the secretary of state to cede to the United States such jurisdiction as he may deem wise over such lands, to hold, to use, and occupy the same for the purpose of the cession, and none other.

Sec. 19. (3166) Jurisdiction of United States over ceded lands.--The jurisdiction heretofore ceded to the United States over any lands acquired by it within the State of Alabama, with the consent of the state, shall be subject to such reservations, restrictions, and conditions as provided in the act or instrument of cession relating to

such acquisition; and shall be subject to the exercise by the state of such jurisdiction, rights, privileges, or power as may now or hereafter be ceded by the United States to the state. The jurisdiction ceded to the United States over any lands hereafter acquired by it within the state of alabama, with the consent of the state, pursuant to the provisions of this title or any other law of the state, unless otherwise expressly provided in the act or any other law of the state, unless otherwise expressly provided in the act or instrument of cession, shall be subject to the following reservations, or conditions. The jurisdiction so ceded shall not prevent the execution upon such lands of any process, civil or criminal, issued under the authority of this state, except as such process might affect the property of the United States thereon. The state expressly reserves the right to tax all persons, firms, corporations, or associations now or hereafter residing or located upon such lands. The state expressly reserves the right to tax the exercise by any person, firm, corporation, or association situated upon such lands. The jurisdiction ceded to the United States shall be for the purposes of the cession, and none other; and shall continue during the time the United States shall be or remain the owner thereof and shall use such lands for the purpose of the cession. The state expressly reserves the right to exercise over or upon any such lands any and all rights, privileges, powers, or jurisdiction which may now or hereafter be released or receded by the United States to the state.

ARIZONA

The act of March 27, 1951, codified as sections 11-603, and 11-604 of the 1952 Cumulative Supplement to the Arizona Code Annotated, 1939:

(House Bill No. 264)

An act Granting the consent of the State of Arizona to the acquisition by the United States of land in this for public purposes, and ceding jurisdiction over such land and over land reserved from the public domain in this State for military purposes

Be it enacted by the Legislature of the State of Arizona:

SECTION 1. The consent of the State of Arizona is hereby given, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, to the acquisition by the United States required for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or for any other military installations of the government of the United States.

SEC. 2 Exclusive jurisdiction over any land in this State so acquired for any of the purposes aforesaid, and over any public domain land in this state, now or in the future reserved or used for military purposes, is hereby ceded to the United States; but the jurisdiction so ceded shall continue no longer than the said United States shall own or lease such acquired land, or shall continue to reserve or use such public domain land for military purposes.

SEC. 3. As to any land over which exclusive jurisdiction is herein ceded, the State of Arizona retains concurrent jurisdiction with the United States, so far, that all process, civil or criminal, issuing under the authority of this State or any of the courts or

judicial officers thereof, may be executed by the proper officers of the state, upon any person amenable to the same within the limits of such land, in like manner and like effect as if no such cession had taken place.

SEC. 4. All laws and parts of law in conflict with any of the provisions hereof are hereby repealed.

SEC. 5. EMERGENCY. To preserve the public peace, health, and safety, it is necessary that this Act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the GOVERNOR--March 27, 1951.

Filed in the Office of the Secretary of State--March 27. 1951.

ARKANSAS

Arkansas Statutes, 1947, title 10, chapter 11, section--

10-1101. Consent to purchase of real property by United States--Cession of jurisdiction.--The state of Arkansas hereby consents to the purchase to be made or heretofore made, by the United States, of any site or ground for the erection of any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, lock, dam, fish hatcheries, or other public buildings of any kind whatever, and the jurisdiction of this States, within and over all grounds thus purchased by the United States, within the limits of this State, is hereby ceded to the United States.

Provided, that this grant of jurisdiction shall not prevent execution of any process of this State, civil or criminal, upon any person who thereof. [Act Apr. 29, 1903, No. 180, Sec. 2, p. 346; C.& M. Dig., Sec. 4565; Pope's Dig., Sec. 5645.]

10-1102. Relinquishment of right to tax.--This State releases and relinquishes her right to tax any such site, grounds or real estate, and all improvements which may be thereon or hereafter erected thereon, during the time the United States shall be and remain the owner thereof. [Act Apr. 29, 1903, No. 180, Sec. 2, p. 246; C. & M. Dig., Sec. 4565; Pipe's Dig., Sec. 5645.]

10-1103. Consent to acquisition by United States of land for river improvements, canals and hydroelectric plants--Cession of jurisdiction.--The consent of the State of Arkansas is given to the acquisition by the United States by purchase or condemnation with just compensation or by grant or otherwise, of such lands in the State of Arkansas as in the opinion of the federal government may be needed for the construction of dams, reservoirs, floodway,locks, canals, hydroelectric power plants, channel improvements, channel diversions, and for such other works as may be necessary for the control of floods, the development of hydroelectric power, the irrigation of lands, the conservation of the soil, recreation, and other beneficial water uses, and the jurisdiction of this state within and over all grounds thus acquired by the United States. Provided, that this grant of jurisdiction shall not prevent execution of any processes of this State, civil or criminal, on any person who may be on said premises. [Acts 1939, No. 327, Sec. 1, p,857.]

10-1104 Lands purchased for national cemeteries.--Cession of jurisdiction.--The jurisdiction of this State within and over all lands purchased by the United States on which national cemeteries may be established within the limits of this State is hereby ceded to the United States, so far as the permanent enclosures of such national

cemeteries may extend and no further. [Act Feb. 21, 1867, No. 60, Sec. 1, p. 153; C. & M. Dig., Sec. 4553; Pope's Dig., Sec. 5633.]

10-1107 Congressional authority with respect to fish and game regulations in national forests--Enforcement.--The consent of the State of Arkansas is given to the making by Congress of the United States or under its authority,of al such rules and regulations as the federal government may determine to be needful in respect to game animals, game an non-game birds and dish on or in and over national forest lands within the State of Arkansas, Provided however, that all such rules and regulations must be approved by the Game and fish Commission before such rules and regulations can be enforced. The

authority to enforce such concurrent rules and regulations is hereby extended jointly to the federal government and to the Game and Fish Commission. [Acts 1925, No. 230, Sec. 675; Pope's Dig., Subsec. 5648, 6000; Acts No. 272, Sec. 1, p, 711.]

CALIFORNIA

Constitution of the State of California, article XIV, section--

Sec. 4. Water Rights of Government Agencies.

Whenever any agency of government, local, state, or federal, hereafter acquires any interest in real property in this State, the acceptance of the interest shall constitute an agreement by the agency to conform to the laws of California as to the acquisition, control, use, and distribution of water with respect to the land so acquired. [New section added November 2, 1954.]

Deerings's California Codes, Government Code, title I, division 1, chapter 1, sections--

Sec. 125. Coded jurisdiction limited by retrocession. All jurisdiction ceded tot he United States by this articles limited by the terms of any retrocession of jurisdiction heretofore or hereafter granted by the United States and accepted by the State.

Sec. 126. Consent to acquisition of land by United States; Conditions; "Acquisition"; Application of section. Notwithstanding any other provision of law, general or special, the Legislature of California consents to the acquisition by the United States of land within this State upon and subject to each and all of the following express conditions and reservations, in addition to any other conditions or reservations prescribed by law:

(a) The acquisition must be for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, or other public purpose within the purview of clause 17 of Section 8 of Article I of the Constitution of the United States, or for the establishment consolidation and extension of national forests under the provisions of the act of Congress approved March 1, 1911, (36 Stat. 961) known as the "Weeks Act";

(b) The acquisition must be pursuant to and in compliance with the laws of the United States;

(c) The United States must in writing have assented to acceptance of jurisdiction over the land upon and subject to each and all of the conditions and reservations in this section and in Section 4 of Article XIV of the Constitution prescribed;

(d) The conditions prescribed in subdivisions (a), (b), and (c) of this section must have been found and declared to have occurred and to exist, by the State Lands Commission, and the commission

must have found and declared that such acquisition is in the interest of the State, certified copies of its orders or resolutions making such findings and declarations to be filed in the Office of the Secretary of State and recorded in the office of the county recorded of each county in which any part of the land is situate;

(e) In granting this consent, the Legislature and the State reserve jurisdiction on and over the land for the execution of civil process and criminal process in all cases, and the State's entire power of taxation including that of each state agency, county, city, city and county political subdivision or public district of or in the State; and reserve to all persons residing on such land all civil and political rights, including the right of suffrage, which they might have were this consent not given.

(f) This consent contain use only so long as the land continues to belong to the United States and is held by it in accordance and in compliance with each and all of the conditions and reservations in this section prescribed.

(g) Acquisition as used in this section means: (1) lands acquired in fee by purchase or condemnation, (2) lands owned by the United States that are included in the military reservation by presidential proclamation or act of Congress, and (3) leaseholds acquired by the United States over private lands or state-owned lands.

(h) In granting this consent, the Legislature and the State reserve jurisdiction over the land, water and use of water with full power to control and regulate the acquisition, use, control and distribution of water with respect to the land acquired.

The finding and declaration of the State Lands Commission provided for in subdivision (d) of this section shall be published once in a newspaper of general circulation in each county in which the land or any part thereof is situated and a copy of such notice shall be personally served upon the clerk of the board of supervisors of each such county. The State Lands Commission shall make rules and regulations governing the conditions and procedure of such hearings, which shall provide that the cost of publication and service of notice and all other expenses incurred by the commission shall be borne by the United States.

The provisions of this section do not apply to any land or water areas heretofore or hereafter acquired by the United States for migratory bird reservations i accordance with the provisions of sections 375 to 380, inclusive, of the Fish and Game Code. [Amended by Stats. 1953, ch. 1856, Sec. 1; Stats. 1955, ch. 649, Sec. 1.]

Sec. 127. Same; Index; Degree of United States jurisdiction.--In addition to other records maintained by the State Lands Commission, the commission shall prepare and maintain an adequate index of record of documents with description of the lands over which the United States acquired jurisdiction pursuant to Section 126 of this code or pursuant to any prior state law. Said index shall record the degree of jurisdiction obtained by the United States for each acquisition.

Government Code, title 3, division 2, part 2, chapter 5, article 4, sections--

Sec. 25420. Acquisition and conveyance of lands to United States

for military purposes.--Pursuant tot his article, the board of supervisors may acquire and convey lands to the United States for use for any military purposes authorized by any law of the United States, including permanent mobilization, training, and supply stations.

Sec. 25421. Determination of desirability of incurring indebtedness. Whenever the Secretary of War agrees on behalf of the United States to establish in any county a permanent mobilization, training, and supply station for any military purposes authorized by any law of the United States, on condition that land aggregating approximately a designated number of acres at such location or locations within the county as he from time to time selects or approves be conveyed to the United States with the consent of the State in consideration of the benefits to be derived by the county from the use of the lands by the United States for such purpose, the board may determine that it is desirable and for the general welfare and benefit of the people of the county and for the interest of the county to incur an indebtedness in an amount sufficient to acquire land in the county for such purposes.

Sec. 25432. Consent of Legislature. Pursuant to the Constitution and laws of the United States, and especially to paragraph 17 of Section 8 of Article 1 of such Constitution, the consent of the Legislature is given to the United States to acquire upon the conditions and for the purposes set forth in this article, from any county acting under this article, title to all lands referred to in this article.

Sec. 25433. Evidence of title: Consent to exclusive legislation by Congress: Conditions subsequent. The title shall be evidenced by a deed or deeds of the county, signed by the chairman of its board of supervisors and attested by the clerk of the county under seal, and the consent of the State is given to the exercise by Congress of exclusive legislation in all cases over any tracks or parcels of land conveyed to it pursuant to this article. The board may insert in every conveyance made pursuant to this article such condition subsequent as it deems necessary to insure the use of the land by the United States for the purposes mentioned in and to carry out the provisions of this article.

Government Code, title 5, division 1, part 1, chapter 2, article 3, sections--

Sec. 50360. Conveyance of land to United States for federal purposes: Acquisition of land. The legislative body of a local agency may convey land which it owns within its boundaries to the United States to be used for federal purposes and may acquire land for this purposes pursuant to this article.

Sec. 50362. Conveyance of land for use by War or Navy Department or as customs and immigration offices: Expenditure from general fund to acquire or improve land. By a four-fifths vote the legislative body of a local agency may convey land which it owns within the State to the United States for use by the War Department, the Navy Department, or as customs and immigration offices and may expend money from the general fund to acquire such land or to improve the land it owns or has acquired and desires to convey to the United States.

Sec. 50367. Consent of Legislature given to United States to acquire land. The consent of the Legislature is given to the United States to acquire land upon the conditions and for the purposes set forth in this article.

Sec. 50370. Exclusive jurisdiction ceded to United States:

Concurrent jurisdiction reserved for certain purposes. The Legislature cedes to the United States exclusive jurisdiction over land conveyed pursuant to this article, reserving concurrent jurisdiction with the United States for the execution of all civil and criminal process, issued under authority of the State as if a conveyance had not been made.

Public Resources Code, division 6, part 4, chapter 1, section--

Sec. 8301. Authority to convey tract for site of lighthouse, beacon or other navigation aid: Jurisdiction over tract after conveyance. The Governor, on application therefor by a duty authorize agent, may convey to the United States any tract of land not exceeding 10 acres, belonging to the State and covered by navigable waters, for the site of a lighthouse, beacon, or other aid to navigation. After conveyance, the United States shall have jurisdiction over the tract, subject to the right of the State to have concurrent jurisdiction so far that all process, civil or criminal, issued under authority of the State may be executed by the proper officers thereof within the tract, upon any person amendable thereto, in like manner and with like effect as if the conveyance had not been made.

Division 6, part 4, chapter 3, section--

Sec. 8401, Authority to grant, transfer and convey property. The boards of supervisors of the several counties may grant, transfer and convey without consideration, any real property or interest therein

now owned or hereafter acquired by any county, to the United States to be used for national park purposes.

Deering's General Laws of the State of California, volume III, page 3393:

Act 8835. Validation of Grants to United States for Military or Naval Purposes. [Stats. 1943, ch. 598.]

AN ACT Validating grants by municipal corporations or any State agency to the United States of America for military or naval purposes.

Sec. 1. Grants of property of municipal corporation ratified.
Sec. 2. Grants by State agency ratified.

Sec. 1. Grants of property of municipal corporation ratified. Every grant, including lease, to the United States of America for military or naval uses, of property of any municipal corporation heretofore made by any legislative body thereof, whether with or without consideration and whether or not previous authority for such grant or lease existed, hereby is ratified and validated; provided, that such grant or lease contains a reservation to the State of deposits of oil and gas and other hydrocarbon and mineral deposits and of right of way for access to all such deposits as prescribed in Section 6402 of the Public Resources Code, except in the case where any such lands have been granted to such municipal corporation without reserving such deposits to the States.

Sec. 2. Grants by State agency ratified. Every grant and lease of real property of the State executed by any State agency to the United States of America for military or naval purposes, is hereby ratified and validated if it was approved by the Governor and if it reserved to the State the mineral deposits and right of way as described in Section 1 hereof.

Gen. Laws 107.

COLORADO

Colorado Revised Statutes 1953, chapter 142, article I, sections--

142-1-1. Consent to acquisition of lands by United States.--The consent of this state is hereby given to the purchase by the United States of such ground in the city of Denver, or any other city or incorporated town in this state, as its authorities may select, for the accommodation of the United States circuit and district courts, post offices, land offices, mints, or other government offices in said cities or incorporated towns, and also to the purchase by the United States of such other lands within this state as its authorities may from time to time select for the erection of forts, magazines, arsenals and other needful buildings.

142-1-2. Consent to condemn land--when notice required.--The consent of the state of Colorado is hereby given, in accordance with the seventeenth clause, eighth section of the first article of the constitution of the United States, to the acquisition by the United States, by pur-

chase, condemnation or otherwise, of any land in this state required for customhouses, courthouses, post offices, arsenals, or other buildings whatever, or for any other proper purpose of the United States government. Before any privately owned land in this state is acquired for any purpose other than for customhouses, courthouses, post offices, arsenals, or other governmental buildings, the United States shall give written notice of intention to acquire such land to the board of county commissioners of the county wherein such land is situated and to the Colorado tax commission, which notice shall be given at least thirty days prior to the date of such intended acquisition.

142-1-3. Jurisdiction of United States over land.--Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes, except the service of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the said United States shall own such land.

142-1-4. When jurisdiction vests--tax exemption.--The jurisdiction shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the said United States when acquired and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal taxation, assessment or other charges which may be levied or imposed under the authority of this state.

CONNECTICUT

The General Statutes of Connecticut, Revision of 1949, title II, chapter 7, section--

130. Sites for beacon lights and other buildings. The treasurer is authorized to execute on behalf of the state and deliver, with the approval of the governor, to the United States of America, a deed of any parcel of land belonging to the state, for the purpose of the erection and maintenance thereon of beacon lights and other buildings and apparatus to be used in aid of navigation. Any such deed shall contain a provision that if such lights, buildings and apparatus are

not erected thereon within five years from the date of such deed, or if the government of the United States of America abandons the use of such land for such purposes, title to such land shall revert to the state. Jurisdiction of the state over any land deeded to the United States under the provisions of this section shall be ceded to the United States, provided the state shall retain concurrent jurisdiction with the United

States, for the sole purpose of serving and executing thereon civil and criminal process issued under any provision of the statutes.

Title LVII, chapter 360, section--

7172. United States; ceding jurisdiction to. The consent of the state off Connecticut is given, in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state required for customhouses, courthouses, post offices, arsenals or other public buildings or for any other purposes of the government. Exclusive jurisdiction in and over any land so acquired by the United States is ceded to the United States for all purposes except the service of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the United States shall own such land. The jurisdiction ceded shall not vest until the United States shall have acquired the title to such lands by purchase, condemnation or otherwise; and, so long as such lands shall remain the property of the United States when acquired as aforesaid, the same shall be exempt from all state, county and municipal taxation, assessment or other charges.

DELAWARE

Delaware Code Annotated, Title 29, Chapter I, Section--

Sec. 101. Territorial limitation.--The jurisdiction and sovereignty of the State extend to all places within the boundaries thereof, subject only to the rights of concurrent jurisdiction as have been granted to the State of New Jersey or have been or may be granted over any places ceded by this State to the United States.

Sec. 102. Consent to purchase of land by the United States.--The consent of the Legislature of Delaware is given to the purchase by the Government of the United States, or under authority of such government, of any tract, piece or parcel of land, not exceeding ten acres in any one place or locality, for the purpose of erecting thereon lighthouses and other needful public buildings whatsoever, and of any tract, piece or parcel of land, not exceeding 100 acres in any one place or locality, for the purpose of erecting thereon forts, magazines, arsenals, dockyards and other needful buildings, from any individuals, bodies politic or corporate, within the boundaries or limits of the State; and all deeds, conveyances, or title papers for the same shall be recorded as in other cases upon the land records of the county in which the land so conveyed may be situated; and in like manner may be recorded a sufficient description, by metes and bounds, courses and distances, of any tracts or legal divisions of any public land

belonging to the United States, which may be set apart by the general government for any or either of the purposes before mentioned, by an order, patent, or other official document or papers so describing such land. The consent herein given is in accordance with the eighteenth clause of the eighth section of the First Article of the Constitution of the United States,, and with the Acts of Congress in such cases made and provided.

Sec. 103. Cession of lands to the United States; taxation; reverter to State.--(a) Whenever the United States shall desire to acquire a title to land of any kind belonging to this State, whether covered by the navigable waters within its limits or otherwise, for the site of any light-house, beacon, life-saving station, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site or sites required therefor, the Governor may convey the site to the United States, and cede to the United States jurisdiction over the site. No single tract desired for any light-house, beacon, or other aid to navigation shall contain more than ten acres, or for any life-saving station more than one acre.

(b) All the lands, rights and privileges which may be ceded under subsection (a) of this section, and all the buildings, structures, improvements, and property of every kind erected and placed on such lands by the United States shall be exempt from taxation so long as the same shall be used for the purposes mentioned in subsection (a) of this section.

(c) The title of any land, which may be ceded under subsection (a) of this section, shall escheat and revert to the State, unless the construction thereon of the light-house, beacon, life-saving station or other aid to navigation, for which it is ceded, shall be commenced within two years after the conveyance is made, and shall be completed within ten years thereafter.

Sec. 104. Execution of process on ceded territory. The sovereignty and jurisdiction of this State shall extend over any lands acquired by the United States under the provisions of sections 101-103 of this title, to the extent that all civil and criminal process issued under authority of any law of this State may be executed in any part of the premises so acquired, or the buildings or structures thereon erected.

FLORIDA

Florida Statutes Annotated, title II, chapter 6, sections--

6.02 United States authorized to acquire lands for certain purposes.--The United States may purchase, acquire, hold, own, occupy and possess such lands within the limits of this state as they shall seek to occupy and hold as sites on which to erect and maintain forts,

magazines, arsenals, dockyards, and other needful buildings, or any of them, as contemplated and provided in the Constitution of the United States; such land to be acquired either by contract with owners, or in the manner hereinafter provided.

6.03 Condemnation of land when price not agreed upon.--If the officer or other agent employed by the United States to make such purchase and the owner of the land contemplated to be purchased, as aforesaid, cannot agree for the sale and purchase thereof, the same

may be acquired by the United States by condemnation in the same manner as is hereinafter provided for condemnation of lands for other public purposes, and any officer or agent authorized by the United States may institute and conduct such proceedings in their behalf.

6.04 Jurisdiction over such lands, how ceded to the United States.--Whenever the United States shall contract for, purchase or acquire any land within the limits of this state for the purposes aforesaid, in either of the modes above mentioned and provided, or shall hold for such purposes lands heretofore lawfully acquired or reserved therefor, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, the governor of this state may, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of said reservation, purchase, contract or acquisition of record, describing the land sought to be ceded by convenient metes and bounds, thereupon, in the name and on behalf of this state, cede to the United States exclusive jurisdiction over the land so reserved, purchased or acquired and sought to be ceded; the United States to hold, use, occupy, own, possess and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever; provided, always, that the consent aforesaid is hereby given and the cession aforesaid is to be granted and made as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States in and over the land or lands so to be ceded, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or of any of the courts or judicial officers thereof may be executed by the proper officers thereof, upon any person amenable to the same, within the limits and extent of lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States security to the property within said limits and extent, and exemption of the same, and of said lands from any taxation under the authority of this state while the same shall continue to be owned, held, used and occupied by the United States for the purposes above expressed and intended, and not otherwise.

6.05 Transfer of title to and jurisdiction over land owned by state.--Whenever a tract of land containing not more than four acres shall be selected by an authorized officer or agent of the United States for the bona fide purpose of erecting thereon a lighthouse, beacon, marine hospital or other public work, and the title to the said land shall be held by the state, then on application by the said officer or agent to the governor of this state, the said executive may transfer to the United States the title to, and jurisdiction over, said land; provided, always that the said transfer of title and jurisdiction is to be granted and made, as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States, in and over the lands so to be transferred, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state or any of the courts or judicial officers thereof, may be executed by the proper officer thereof, upon any person amenable to the same, within the limits and extent of the lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States, security to their property within said limits or extent. The said lands shall hereafter remain the property of the United States and be exempt from taxation as long as they be needed for said purposes.

Title VI, chapter 46, section--

46.12 Military, naval or other service as residence.--Any person in any branch of service of the government of the United States, including military and naval service, and the husband or the wife of any such person, if he or she be living within the borders of the State of Florida, shall be deemed prima facie to be a resident of the State of Florida for the purpose of maintaining any suit in chancery or action at law. Laws 1943, c. 21966, Sec. 1.

GEORGIA

Constitution of the State of Georgia of 1945, article VI, section XIV, chapter 2-49--

2-4901. (6538) paragraph 1. Divorce cases.--Divorce cases shall be brought in the county where the defendant resides, if a resident of this state; if the defendant be not a resident of this state, then in the county in which the plaintiff resides, provided, that any person who has been a resident of any United States Army Post or military reservation within the State of Georgia for one year next preceding the filing of the petition may bring an action for divorce in any county adjacent to said United States Army Post or military reservation.

The Code of Georgia of 1933, sections--

15-301. (25) Cession to the United States of land for public buildings, forts, etc.--The consent of the State is hereby given, in accordance with the 17th clause, section 8, of article 1, of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any lands in this State which have been or may hereafter be acquired for sites for customs houses, courthouses, post offices, or for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. (Acts 1906, p. 126; 1927, p. 352.)

15-302. (26) Jurisdiction.--Exclusive jurisdiction in and over any lands so acquired by the United States is hereby ceded to the United States for all purposes except service upon such lands of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than said United States shall own such lands. The State retains its civil and criminal jurisdiction over persons and citizens in said ceded territory, as over other persons and citizens in this State, except as to any ceded territory owned by the United States and used by the Department of Defense, but the State retains jurisdiction over the regulation of public utility services in any ceded territory. Nothing herein shall interfere with the jurisdiction of the United States over any matter or subjects set out in the acts of Congress donating money for the erection of public buildings for the transaction of its business in this State, or with any laws, rules, or regulations that Congress may adopt for the preservation and protection of its property and rights in said ceded territory, and the proper maintenance of good order therein. (Acts 1890-1, p. 201; 1927, p. 352, p. 264.)

15-303. Time of vesting of jurisdiction; redemption of lands from taxation.--The jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation, or otherwise; and as long as the said lands shall remain the property of the United States when acquired as

aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under authority of the State. (Acts 1927, p. 352.)

30-107. (2950) Period of petitioner's residence in State.--No court shall grant a divorce of any character to any person who has not been a bona fide resident of the State six months before the filing of the application for divorce: Provided, that any person who has been a resident of any United States army post or military reservation within the State of Georgia for one year next preceding the filing of the petition may being an action for divorce in any county adjacent to said

United States army post or military reservation. (Acts 1893, p. 109; 1939, p. 203; 1950, p. 429.)

45-336. Federal game regulations on United States Government lands in Georgia; consent of State.--The consent of the General Assembly is hereby given to the making by Congress of the United States, or under its authority, of all such rules and regulations as the Federal Government shall determine to be needful in respect to game animals, game and non-game birds, and fish on such lands in the northern part of Georgia as shall have been, or may hereafter be, purchased by the United States under the terms of the Act of Congress of March 1, 1911, entitled, "An Act to enable any State to cooperate with any other State or States or with the United States for the protection of the watersheds of navigable streams and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers" (36 United States Statutes at Large, page 961), and Acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereof. (Acts 1922, p.106.)

IDAHO

Idaho Code containing the General Laws of Annotated (Published by authority of Laws 1947, chapter 224) chapter 7, sections--

58-701. Military lands--Yellowstone National Park lands--Cession--Jurisdiction for execution of process reserved.--Pursuant to article 1, section 8, paragraph 17, of the Constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to all lands embraced within the military posts and reservations of Fort Sherman and Boise Barracks, together with such other lands in the state as may be now or hereafter acquired and held by the United States for military purposes, either as additions to the said posts or as new military posts or reservations which may be established for the common defense; and, also, all such lands within the state as may be included in the territory of the Yellowstone National Park, reserving, however, to the state a concurrent jurisdiction for the execution, upon said lands, or in the buildings erected thereon, of all process, civil or criminal, lawfully issued by the courts of the state, and not incompatible with this cession. [1890-1891, p. 40, Sec. 1; reen. 1899, p. 22, Sec. 1; reen. R.C. & C.L., Sec. 27; C.S., Sec. 70; I.C.A., Sec. 56-601.]

58-702. Consent to purchases by United States--Jurisdiction for execution of process reserved.--Consent is given to any purchase

already made, or that may hereafter be made, by the government of the United States, of any lots, or tracts of land, within this state, for the use of such government, and to erect thereon and use such buildings,

or other improvements, as may be deemed necessary by said government; and over such lands and the buildings, or improvements, that are, or may be, erected thereon, the said government shall have entire control thereon all process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession. [1895, p. 21, Sec.1; reen. 1899, p. 235, Sec. 1; reen. R.C. & C.L., Sec. 28; C.S., Sec. 71; I.C..A., Sec. 56-602.]

58-705. Consent to land purchase for migratory labor homes projects--Jurisdiction.--Consent is given to any purchase already made, or that may hereafter be made, by the government of the United States of any lots, or tracts of land within this state, for migratory labor homes projects; and over such lands and the buildings or improvements that are, or may hereafter be, erected thereon the United States shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon any process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession. [1943, ch. 152, Sec. 1, p. 308.]

ILLINOIS

The two acts of July 10, 1953, repealed all other pertinent statutes.

An act to repeal "An Act ceding to the United States exclusive jurisdiction over certain lands acquired for public purposes within this State, and authorizing the acquisition thereof", approved April 11, 1899

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. "An Act ceding to the United States exclusive jurisdiction over certain lands acquired for public purposes within this state, and authorizing the acquisition thereof," approved April 11, 1899, is repealed. (Approved July 10, 1953. Ill.Rev.Stat., Vol. 2, p. 1430.)

An act to repeal "An Act in relation to the acquisition of land in the State by the United

States for governmental purposes", approved June 30, 1923

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

SECTION 1. "An Act in relation to the acquisition of land in the State by the United States for governmental purposes," approved June 30, 1923 is repealed. (Approved July 10, 1953. Ill. Rev. Stat., Vol. 2, 143.)

Jones Illinois Statutes Annotated, chapter 137, sections--

An act granting to the Government of the United States the right to enter upon and take possession of such small tracts or parcels of land lying within the State of Illinois, and on the waters of the Ohio and

Wabash rivers, as may be necessary to facilitate the improvement of said rivers. (Approved April 15, 1875. In force July 1, 1875. L. 1875 p.88.)

Preamble. Whereas, the government of the United States has begun, and will probably continue the improvement of the Ohio and Wabash rivers; and whereas, it may be advisable, for the removal of all doubts as to the right of the general government to acquire real estate and establish public works within the limits of any State without the consent of such State: therefore,

137.02 Consent of State given United States to enter land to improve Ohio and Wabash rivers.] SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the consent of the State of Illinois be and is hereby given to the government of the United States to enter upon such small parcels or tracts of land lying on the bank of the Ohio and Wabash rivers, within the State of Illinois, as may be necessary for the construction of locks, lock-keepers' dwellings, and abutments or other works, to be used to facilitate the improvement of the channels of said rivers.

137.03 Eminent domain.] Sec.2. All cases of damages that may arise under the provisions of this Act shall be settled as provided for in "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872. In force July 1, 1872.

For act referred to in text of this section, see 109.248--109.261.

137.04 Exclusive jurisdiction ceded.] Sec.3. Exclusive jurisdiction is hereby ceded to the United States over all or any lands acquired under the provisions of this Act.

INDIANA

Burns Indiana Statutes Annotated (1951 Replacement), title 62, chapter 10, sections--

62-1001 [13993]. Jurisdiction ceded to United States.--The jurisdiction of this state is hereby ceded to the United States of America over all such pieces or parcels of land within the limits of this state as have been or shall hereafter be selected and acquired by the United States for the purpose of erecting post-offices, custom-houses or other structures exclusively owned by the general government and used for its purposes: Provided, That an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of the state; And, provided further, That this cession is upon the express condition that the state of Indiana shall so far retain concurrent jurisdiction with the United States in and over all lands acquired or hereafter acquired as aforesaid that all civil and criminal process issued by any court of competent jurisdiction or officer having authority of law to issue such process, and all orders made by such court or any judicial officer duly empowered to make such orders necessary to be served upon any person, may be executed upon said

lands, and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded as aforesaid [Acts 1883, ch. 7, Sec. 1, p. 8]

62-1002 [13994]. Exemption from taxation-Limitations,--The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments so long as the same shall remain the property of the United States: Provided, however, That this exemption shall not extend to or include taxes levied by the state of Indiana upon the gross receipts or income of any person, firm, partnership, association, or corporation which is received on account of the performance of contracts or other activities upon such lands or within the boundaries thereof. [Acts 1883, ch. 7, Sec.2, p. 8; 1901, ch. 158, Sec. 1, p. 344; 1941, ch. 211, Sec. 1, p. 641.]

62-1003 [13995]. Light-house sites--Jurisdiction ceded to United States.--Whenever the United States desires to acquire title to land belonging to the state, and covered by the navigable waters United States, within the limits thereof, for the site of a light-house, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one [1] of the purposes aforesaid, then the governor of the state is authorized and empowered too convey the title to the United States, and to cede to the said United States jurisdiction so far that all process, civil or criminal, issuing under the authority of the state, may be executed by the proper officers thereof upon any person or persons amenable to the same, within the limits of the land so ceded, in like manner and to like effect as if this act [section] had never been passed. [Acts 1875 (Spec. Sess.), ch. 14, Sec. 1, p. 60.]

62-1007 [13999]. Condemnation by United States for river improvements.--Whenever the United States shall begin the improvement of any navigable river within or bordering upon this state, by means of locks, dams and adjustable chutes, the consent of the state of Indiana is hereby given to the acquisition, be the United States, by purchase or by condemnation, in the manner hereinafter provided, of any lands, buildings, or other property necessary for the purpose of erecting thereon dams, abutments, locks, lock-keepers' houses, chutes, and other necessary structures for the construction and maintenance of slack-water navigation on said land or lands, buildings and other property, when purchased or acquired as provided by this act [Secs. 62-1007--62-1009], and shall exercise jurisdic-

tion and control over the same. [Acts 1875 (Spec. Sess.), ch 34, Sec. 1, p. 81.]

62-1008 [1400]. Proceedings, how had.--If the United States shall determine to take the lands, buildings or other property necessary for the purposes mentioned in the preceding section, and can not agree with the owner or owners of such land, buildings or other property as to the amount of compensation to be made for such taking, the circuit court having jurisdiction in the county where such lands, buildings or other property are situated, upon application by either the United States or the said owner or owners, or any one in behalf of either, shall appoint three [3] disinterested freeholders to ascertain and determine the amount of compensation to be paid to such owner or owners who shall make a report to the said court of their award, on or before the first term next after their appointment: Provided, That the said United States shall not be authorized to take possession or use or occupy the lands, buildings or other property taken under the provision of this section until the amount of said award shall be paid

to the owner or owners thereof: An provided, further: That the said court may set said the report of said viewers, upon being satisfied that the amount of said award is excessive. [Acts 1875 (Spec. Sess.), ch. 34, Sec. 2, p. 81.]

62-1010 [14002]. United States may purchase for ohio or Wabash River improvements.--The consent of the legislature of the state of Indiana is hereby given to the purchase, by the government of the United States, or under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate, on the banks of the Ohio or Wabash River, within the limits of this state, for the purpose of creating thereon locks, dams, abutments, lock-keepers' dwellings, or other structures which may be necessary in connection with the improvement of the said river; and all deeds and conveyances of title-papers for the same shall be recorded as in other cases upon the land records of the county in which the lands so conveyed may be--the consent herein and hereby given being in accordance with the seventeenth clause of the eighth section

of the first article of the Constitution of the Unites States, and with the acts of congress in such cases made and provided. [Acts 1877, ch. 50,Sec. 1, 90.]

62-1011 [14003]. Condemnation.--In case of failure of the United States to agree with the owner or owners of any such land as the United States may deem necessary for the purposes named in the preceding section, within this state, it shall be lawful for the United States to apply for the condemnation of such, land, not exceeding ten [10] acres in any one [1] place, by petition to any judge of a court of record of this state in or nearest to the county where the land may be situated, either in term time or vacation, notice of the time and place of such application having been first duly given by publication for thirty [30] days prior to the day of such application in some newspaper of general circulation published in the county where the land lies, or, if the owner or owners reside in the state of Indiana, by personal service upon the owner or owners of such land at least twenty [20] days prior to such application, and thereupon it shall be lawful for such judge to appoint three [3] disinterested freeholders of the county where such land lies as commissioners, who, having been first duly sworn to well and truly appraise the damages due the owner or owners of said land so proposed to be taken, shall report, in writing, to said judge the amount of damages to be paid to the owner or owners of said land, the title of said land shall vest in the United States. Exclusive jurisdiction and right of assessment and taxation is hereby ceded to United States over an lands acquired under the provisions of this act [Secs. 62-1010--62-1012] and over the buildings or property of the United States situated thereon [Acts 1877, ch. 50, Sec. 2, p. 90.]

62-1012 [14004]. Process of state courts.--This act [Secs. 62-1010--62-1012] shall not be construed in such manner ass to debar or hinder the process of any court or judge of this state from running within the boundaries of the lands so acquired by the United States, or over any part of such land, for any longer time than the said lands shall be used for the purposes after said. {Acts 1877, ch. 50, Sec. 3, p. 90.]

62-1013 [14005]. Condemnation by United States.--Whenever the United States of America shall desire to acquire title to a tract of land in the state of Indiana, for any purposes, and the said state

shall have given its consent to such acquisition, it shall be lawful for the said United States to acquire title to such tract of and by condemnation in the manner hereinafter provided. [Acts 1875, ch. 115, Sec. 1, p. 163.]

62-1021. Consent of state to acquisition of land.--The consent of the state of Indiana is hereby given to the acquisition by the United States of America by purchase,gift, or condemnation with adequate compensation such lands in the state of Indiana as the United States of America may desire to purchase and acquire, pursuant to any act of Congress for the acquisition, establishment, maintenance, and development of fish hatcheries, wild life preserves, forest preserves, or for agricultural, recreational, or experimental uses. [Acts 1937, ch. 52, Sec. 1, p. 291.]

62-1022. Powers granted United States of America.--The United States of America is hereby granted all the power and authority necessary for the maintenance, development, control, and administration of such lands as may be acquired by virtue of this act [Secs. 62-1021--62-1027] through its officers, agents, or employees, or through cooperative agreement with the department of conservation of the state of Indiana, except as herein otherwise provided. [Acts 1937, ch. 52, Sec. 2, p. 291.]

62-1024. Concurrent jurisdiction--Exclusive rights retained by state--Exception.--(a) The state of Indiana shall retain concurrent jurisdiction with the United States in and over lands so acquired, so far that civil process in all cases and such criminal process as may issue under the authority of the state of Indiana against and person charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in the same manner as if this act [Secs. 62-1021--62-1027] had not been passed.

(b) The state of Indiana shall retain the exclusive right to regulate the taking, killing, or hunting of wild birds or wild animals, except migratory birds, on any and all land acquired by the United States under the provisions of this act in the same manner and to the same extent as it may lawfully regulate the taking, killing, or hunting of wild birds or wild animals on land owned by the state and used for conservation purposes. [Acts 1937, ch. 52, Sec. 4, p. 291.]

IOWA

The Code of Iowa, 1954, title 1, chapter 1, sections--

1.2 Sovereignty. The state possesses sovereignty coextensive with the boundaries referred to in section 1.1, subject to such rights as may the boundaries referred to in section 1.1, subject to such rights as may at any time exist in the United States in relation to public lands, or to any establishment of the national government. [C51, Sec. 2; R60, Sec. 2; C73, Sec. C97, Sec. 2; C24, 27, 31, 35, 39, Sec. 2; C46, 50, Sec. 1.2].

1.3 Concurrent jurisdiction. The state has concurrent jurisdiction on the waters of any river or lake which forms a common boundary be-

tween this and any other state. [C51, Sec. 3; R60, Sec. 3; C79, Sec. 3; C24, 27, 31, 39, Sec. 3; C46, 50, Sec. 1.3].

See act of congress, Aug. 4, 1846 [9 Stat. L, p.56].

1.4 Acquisition of lands by United States. The United States of America may acquire by condemnation or otherwise for any of its uses or purposes any real estate in this state, and may exercise jurisdiction there over but not to the extent of limiting the provisions of the laws of this state.

This state reserves, when not in conflict with the constitution of the United States or any law enacted in pursuance thereof, the right of service on real estate held by the United States of any notice or process authorized by its laws; and reserves jurisdiction, except when used for naval or military purposes, over all offenses committed thereon against its laws and regulations and ordinances adopted in pursuance thereof.

Such real estate shall be exempt from all taxation, including special assessments, while held by the United States except when taxation of such property is authorized by the United States. [R60, Subsec. 2197, 2198; C73, Sec. 4; S13, Subsec. 4a-4d, 2024c; C24, 27, 31, 35, 39, Sec. 4; C46, 50, Sec. 1.4].

Title XVI, chapter 427, section--

427.1 Exemptions. The following classes of property shall not be taxed:

1. Federal and state property. The property of the United States and this state, including university, agricultural college, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the congress of the United States shall expressly authorize the taxation of such machinery and equipment.

KANSAS

General Statutes of Kansas, Annotated, 1949 (Authenticated by the Attorney General and Secretary of State of the State of Kansas)

Chapter 27, article 1 sections--

27-101. Consent given to the United States to acquire land. That the consent of the state of Kansas is hereby given, in accordance with the provisions of paragraph number seventeen, section eight, article

one of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in the state of Kansas, which has been, or may hereafter be, acquired for custom houses, courthouses, post offices, national cemeteries arsenals, or other public buildings, or for other purpose of the government of the United States. [L. 1927, ch. 206, Sec. 1; March 17.]

27-102. Jurisdiction. The exclusive jurisdiction over and

within any lands so acquired by the United States shall be, and the same is hereby, ceded to the United States, for all purposes; saving, however, to the state of Kansas the right to serve therein any civil or criminal process authority of the state, in any action on account of rights acquired, obligations incurred or crimes committed in said state, but outside the boundaries of such land; and saving further to said state the right to tax the property and franchises of any railroad, bridge or other corporations within the boundaries of such lands;but the jurisdiction hereby ceded shall not continue after the United States shall cease to own said lands. [L. 1927, ch. 206, Sec. 2; March 17.]

27-102a. Exemption from taxation. That the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to said lands; and as long as said lands shall remain the property of the United states, the same shall be exempt from all state, county and municipal taxes. [L. 1927, ch. 206, Sec. 3; March 17.]

27-102b. Taxing certain property upon military reservations. The property of any private corporation engaged in the business of owning or operating housing projects upon United States military reservations in this state shall be assessed and taxed annually, and the county in which the housing project lies geographically as determined by the descriptions set out in chapter 18 of the General Statutes of 1949 shall have jurisdiction over such housing projects for the purposes of taxation. [L. 1951, ch. 506, Sec. 1; Feb. 28.]

27-102c. Same; property declared personalty; collection. For the purposes of valuation and taxation, all buildings,, fixtures and improvements of such housing projects on such military reservations are hereby declared to be personal property and shall be assessed and taxed as such, and the taxes imposed on such buildings, fixtures and improvements shall be collected by levy and sale of the interest of such owner, in the same manner as provided in other cases for the collection of taxes on personal property. [L. 1951, ch. 506, Sec. 2, Feb. 28.]

Chapter 60, article 15, section--

60-1502. Residence of plaintiff.--The plaintiff in an action for divorce must have been an actual resident in good faith of the state for

one year next preceding the filing of the petition, and a resident of the county in which the action is brought at the time the petition is filed, unless the action is brought in the county where the defendant resides or may be summoned: Provided, That any person who has been a resident of any United States army post or military reservation within the state of Kansas for one year next preceding the filing of the petition may bring an action for divorce in any county adjacent to said United States army post or military reservation. [L. 1909, ch. 182, Sec. 662; R.S. 1923, Sec. 60-1502; L. 1933, ch. 216, Sec. 1; June 5.]

KENTUCKY

Kentucky Revised Statutes, 1953, as amended by the Act of March 13, 1954, sections--

SECTION 1. KRS 3.010 is amended to read as follows: "The Commonwealth of Kentucky consents to the acquisition by the United

States of all lands an appurtenances in this state, by condemnation, gift or purchase, which are needful to their constitutional purposes, but said acquisition shall not be deemed to result in a cession of jurisdiction by this Commonwealth."

SECTION 2. Whenever the United States, or any agency thereof, shall request the Commonwealth to cede jurisdiction over any areas, it shall be the duty of the Governor to transmit such request to the next session of the General Assembly for such action as it may deem proper.

SECTION 3. Whenever the United States accepts the cession of jurisdiction over any area, the letter of acceptance shall be entered upon the Executive Journal.

SECTION 4. The Commonwealth consents to any retrocession by the United States of lands within its geographical boundaries whenever the United States shall have ceased to exercise exclusive or special jurisdiction over such lands. Inter alia, the conveyance of lands to private owners shall be deemed to constitute a retrocession of jurisdiction.

Approved March 13, 1954.

3.020 [2376a-1; 2376b-1; 2376c-1,2376e-2; 2739f-2; 2739f-8; 3766e-17; 3766e-30] Jurisdiction retained for execution of process. Kentucky retains jurisdiction for the execution of process, issued under its authority, over all lands in Kentucky heretofore or hereafter ceded to or acquired by the United States for the erection or establishment of post offices, custom houses, courthouses, locks, dams, canals, parks, cemeteries or forest reserves.

LOUISIANA

Louisiana Revised Statutes of 1950, title 52, chapter 1, section--

Sec. 1. Consent of state to acquisition.--The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the Federal Government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.

The state may serve all civil and criminal process issuing under authority of Louisiana on the property acquired by the United States.

(Source: Acts 1892, No. 12, Secs. 1, 2; Acts 1942, No. 31, Sec. 1.)

Title 56, chapter 2, section--

Sec. 711. Protection of watersheds of navigable streams.--The consent of the State of Louisiana is given to the Congress of the United States to make or to authorize the proper authorities of the Government of the United States to make such rules and regulations as the Government of the United States determines to be needful in respect to game animals, fish, and game and non-game birds on such lands and in the waters thereof situated in the state as are purchased by the United States under the terms of the Act of Congress of March 1, 1911, entitled "An Act to enable any State to cooperate with any other state or with the United States for the protection of the watersheds of navigable streams and to appoint a commission for the

acquisition of lands for the purpose of conserving the navigability of navigable rivers", and Act of Congress supplementary thereto and amendatory thereof.

(Source: Acts 1940, No. 52, Sec. 1.)

MAINE

Revised Statutes of the State of Maine, 1954, chapter 1, sections--

SEC. 1. Sovereignty and jurisdiction.--The jurisdiction and sovereignty of the state extend to all places within its boundaries, subject only to such rights of concurrent jurisdiction as are granted over places ceded by the state to the United States. (R.S. c. 1, Sec. 1.)

SEC. 2. Sovereignty in space.--Sovereignty in the space above the lands and waters of the state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state. (R.S. c. 1, Sec. 2.)

SEC. 5. State processes executed i places ceded.--Civil, criminal and military processes, lawfully issued by an officer of the state, may

be executed in places ceded to the United States, over which a concurrent jurisdiction has been reserved for such purpose. (R. S. c. 1, Sec. 5.)

SEC. 6. Governor may cede not exceeding 10 acres to the United States; compensation to owner.--The governor, with the advice and consent of the council, reserving such jurisdiction, may cede to the United States for purposes named in its constitution any territory not exceeding 10 acres, but not including any highway; nor any public or private burying ground, dwelling house or meeting house, without consent of the owner. If compensation for land is not agreed upon, the estate may be taken for the intended purpose by payment of a fair compensation, to be ascertained and determined in the same manner as, and by proceedings similar to those provided for ascertaining damages in locating highways, in chapter 89. (R.S. c. 1, Secs. 6, 7.]

SEC. 7. Governor may purchase or take land for forts, etc., and may cede to the United States; compensation to owner; limitation.--

Whenever the public exigencies require it, the governor with the advice and consent of the council may take in the name of the state, by purchases and deed, or in the manner herein denoted, any lands or right of ways, for the purpose of erecting, using or maintaining any fort, fortification, arsenal, military connection, way, deliver possession and cede the jurisdiction thereof to the United States, on such terms as are deemed expedient.

The owner of any land or rights taken shall have a just compensation therefor, to be determined as prescribed in section 6, provided that application is made within 5 years after the land is taken. (R.S. c. 1, Secs. 8, 10.)

SEC. 8 Land surveyed; plan, etc., to be filed and recorded.--When the governor and council determine that a public exigency requires the taking of any land or rights as provided for in section 7, they shall cause the same to be surveyed, located and so described that the same can be identified, and a plan thereof, with a copy of the order in council, shall be filed in the office of the secretary of state and

there recorded. The filing of said plain and copy shall vest the title to the land and rights aforesaid, in the state of Maine or their grantees, to be held during the pleasure of the state and, if transferred to the United States, during the pleasure of the United States. (R.S. c. 1, Sec. 9)

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SEC. 9. Consent of legislature to acquisition by United States of land within the state for public buildings; record of conveyances.--In accordance with the constitution of the United States, Article 1, Section VIII, Clause 17, and acts of congress in such cases provided, the consent of the legislature is given to the acquisition by the United States, or under its authority, by purchase, condemnation or otherwise, of any land in this state required for the erection of lighthouses or for sites for customhouses, courthouses, post offices, arsenals or other public buildings, or for any other purposes of the government, deeds and conveyances or title papers for the same shall be recorded upon the land records of the county or registry district in which the land so conveyed may lie; and in like manner may be recorded a sufficient description by metes and bounds, courses and distances, of any tracts and legal divisions of any public lands belonging to the United States set apart by the general government for either of the purposes before mentioned, by an order, patent or other official paper so describing such land. (R.S. c. 1, Sec. 11)

SEC. 10. Jurisdiction ceded to United States over land acquired for public purposes; concurrent jurisdiction with United States retained.--Exclusive jurisdiction in and over any land acquired under the provisions of this chapter by the United States shall be, and the same is ceded to the United States for all purposes except the service upon such sites of all civil and criminal processes of the courts of this state; provided that the jurisdiction ceded shall not vest until the United States of America has acquired title to such land shall remain the property of the United States, and no longer; such jurisdiction is granted upon the express condition that the state of Maine shall retain a concurrent jurisdiction with the United States on and over such lands as have been or may hereafter be acquired by the United States so far as that all civil and criminal process which may lawfully issue under the authority of this state may be executed thereon in the same manner and way as if said jurisdiction had not been ceded, except so far as said process may affect the real or personal property of the United States. (R.S. c. 1, Sec. 12.)

SEC. 12. Relinquishment to United States to title to land for erection of lighthouses, forts, etc., when title cannot otherwise be obtained; disposal of purchase money.--Whenever, upon application of an authorized agent of the United States, it is made to appear to any justice

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of the superior court that the United States desires to purchase a tract of land and the right of way thereto, within the state, for the erection of a lighthouse, beacon light, range light or light keeper's dwelling, forts, batteries or other public buildings, and that any owner is a minor, or is insane, or is from any cause incapable of making perfect title to said lands, or is unknown, or a nonresident, or from disagreement in price or any other cause refuses to convey

such land to the United States, said justice shall order notice of said application to be published in some newspaper in the county where such land lies, if any, otherwise in a paper in this state nearest to said land, once a week for 3 weeks, which notice shall contain an accurate description of said land, with the names of the supposed owners, provable in the manner required for publications of notice in chapter 112, and shall require all persons interested in said land on a day specified in said notice to file their objections to the proposed purchase, and at the time so specified a justice of said court shall empanel a jury, in the manner provided for the trial of civil actions, to assess the value of said land at its fair market value and all damages sustained by the owner of such land by reason of such appropriation; which amount when so assessed, with the entire costs of said proceedings, shall be paid into the treasury of said county, and thereupon the sheriff thereof, upon the production of the certificate of the treasurer that said amount has been paid, shall execute to the United States and deliver to its agent a deed of said land, reciting the proceedings in said cause, which deed shall convey to the United states a good and absolute title to said land against all persons. The money paid into such county treasury shall there remain until ordered to be paid our by a court of competent jurisdiction. (R. S. c.1, Secs. 14,15.)

MARYLAND

The Annotated Code of Maryland, Edition of 1951, article 16, section--

An. Code, 1939, sec. 39, 1924, sec. 37A. 1927, chs. 225 and 494. 1947, ch. 849, sec. 39

32. All persons residing on property lying within the physical boundaries of any county of this State or within the boundaries of the City of Baltimore but on property over which jurisdiction is exercised by the Government of the United States by virtue of the 17th clause, 8th section of first article of the Constitution of the United States, and section 31 and 35 of article 96 of the Annotated Code of the Public Laws of Maryland, shall be considered as residents of the State of Mary land and of the County or City of Baltimore, as the case may be, in which the land is situate for the purpose of jurisdiction in the

Courts of Equity of this State in all applications for divorce and for annulment of marriage.

Article 96, sections--

An. Code, 1939, sec. 1. 1924, sec. 1. 1912, sec. 1. 1888, sec. 1. 1874, ch. 193, sec. 1

1. The consent of the State is given to the purchase by the government of the United States, or under the authority of the same, of any tract, piece or parcel of land not exceeding five acres, from any individual or individual, bodies politic or corporate within the boundaries or limits of the State, for the purpose of erecting thereon light-houses, beacons and other aids to navigation; and all deeds and conveyances of title papers for the same shall be recorded, as in other cases, upon the land records of the county in which the lands so

conveyed may lie; the consent herein given being in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States and with the acts of Congress in such cases made and provided.
An. Code, 1939, sec 2. 1924, sec. 2. 1912, sec, 2. 1904, sec. 2 1888, sec. 2. 1874, ch. 193, sec. 2

2. With respect to land covered by the navigable waters within the limits of the State, and on which a lighthouse, beacon or other aid to navigation has been built, or is about to be built, the governor of the State, on application of an authorized agent of the United States, setting forth a description of the site required, is authorized and empowered to convey the title to the United States, and to cede jurisdiction over the same; provided, no single tract shall contain more then five acres.
An. Code, 1939, sec. 3. 1924, sec. 3. 1912, sec. 3. 1904, sec. 3. 1888, sec. 3. 1874, ch. 193. sec. 3

3. The lots, parcels or tracts of land so ceded to the United States, together with the tenements and appurtenances, for the purpose before mentioned, shall be held exempt from taxation by the State of Maryland.
An. Code, 1939, sec. 4. 1924, sec. 4. 1912, sec. 4. 1904, sec. 4. 1888, sec. 4, 1888, sec. 4. 1874. ch. 192, sec. 4

4. This State shall retain concurrent jurisdiction with the United States in and over the tracts of land aforesaid, so that criminal and civil processes, issued under the authority of the State by any officer thereof, may be executed on said lands and in the buildings that may be erected thereon, in the same way and manner as if jurisdiction had not been ceded; and exclusive jurisdiction shall revert to and revest in this State whenever the said tract of land shall permanently cease to be

used and occupied by the United States for any of the purposes heretofore enumerated.
An. Code, 1939, sec. 5. 1924, sec. 5. 1912, sec. 5. 1904, sec. 5. 1888, sec. 5. 1874, ch. 395, sec. 1

5. Whenever the United States are desirous of purchasing or procuring the title to any tract, piece or parcel of lad within the boundaries or limits of this State, for the purpose of erecting thereon any lighthouse, beacon-light, range-light, light-keeper's dwelling, forts, magazines, arsenals, dockyards, buoys, public piers, or necessary public buildings or improvements connected therewith, and cannot agree with the owner thereof as to the price and for the purchase thereof; or it the owner be feme covert, under age, non compos mentis, or of the county wherein the said land lies, or for any other cause is incapable of making a perfect title to said lands, the United States, by any agent authorized under the hand and seal of any member of the president's cabinet, may apply by petition in writing to the circuit court for the county where the land lies; which petition shall be filed with the clerk of said court, to have the said land condemned for the use and benefit of the United States; and any such agent of the United States may, for the purpose of ascertaining its bounds and quantity, enter upon the lands, without injury thereto, which the United States may desire to purchase for any of the purposes aforesaid.

An. Code, 1939, sec. 17. 1924, sec. 17. 1912, sec. 17. 1904, sec. 17 1888, sec. 17. 1874, ch. 305, sec. 13

17. Jurisdiction is hereby ceded to the United States over such lands as shall be condemned as aforesaid for their use for public purposes, as soon as the same shall be condemned, under the sanction of the general assembly of this State hereinbefore given to said condemnation; provided, always, that this State shall retain concurrent jurisdiction with the United States in and over all lands condemned under the provisions of this Article, so far as that all processes, civil and criminal, issuing under the authority of this State, or any of the courts or judicial officers thereof, may be executed on the premises so condemned, and in any building erected or to be erected thereon, in the same way and manner as if this Article had not been passed; and exclusive jurisdiction shall revert to and revest in the State whenever the said premises shall cease to be owned by the United States and used for some of the purposes mentioned in this Article.

An. Code, 1939, sec. 18. 1912, sec. 18. 1904, sec. 18. 1888, sec. 18. 1874, ch. 395, sec. 14

18. All the lands that may be condemned under the provisions of this

Article, and the buildings and improvements erected or to be erected thereon, and the personal property of the United States, and of the officers thereof, when upon said land, shall be exonerated and exempted from taxation for state and county purposes, so long as the said land shall continue to be owned by the United States and used for any of the purposes specified in this Article, and no longer.

An. Code, 1939, sec. 19. 1924, sec. 19. 1912, sec. 19. 1904, sec. 19. 1900, ch. 67, sec. 19

19. The consent of the State is given to the purchase by the government of the United States, or under the authority of the same, from any individual or individuals, bodies politic or corporate, of any tract, piece or parcel of land within the boundaries or limits of the State for the purpose of erecting thereon forts, magazines, arsenals, coast defenses or other fortifications of the United States, or for the purpose of erecting thereon barracks, quarters and other needful buildings for the use of garrisons required to man such forts, magazines, arsenals, coast defenses or fortifications; and all deeds and title papers for the same shall be recorded as in other cases upon the land records of the county in which the land so conveyed may be; the consent herein given being in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States and with the acts of congress in such cases made and provided.

An. Code, 1939, sec. 21. 1924, sec. 21. 1912, sec.21. 1904, sec. 21. 1900, ch. 97, sec. 21

24. The provisions of sections 17 and 18 of this Article shall apply to all property or lands purchased or acquired by the United States under the provisions of Sections 19 and 20 of this Article.

An. Code, 1939, sec. 23. 1924, sec. 28, 1912, sec. 28. 1904, sec. 26. 1902, ch. 263, secs. 1, 2. 1904, ch. 357, secs. 1, 2. 1908, ch. 194

28. The jurisdiction of the State of Maryland is hereby ceded to the United States of America over so much land as has been or may be hereafter acquired for public purposes of the United States; provided, that the jurisdiction hereby ceded shall not vest until the United States of America shall have acquired the title to the lands, by grant or deed, from the owner or owners thereof, and evidences thereof shall have been recorded in the office where, by law, the title to said land is required to be recorded and the United States of America are to retain such jurisdiction so long as such lands shall be for the purposes in this section mentioned, and no longer; and such jurisdiction is granted upon the express condition that the State of Maryland shall retain a concurrent jurisdiction with the United States in and over the said lands, so far as that civil process in all cases not affecting real or personal property of the United States, and such criminal or other process as shall issue under the authority of the State of Maryland against any person or persons charged with crimes or misdemeanors committed within or without the limits of said lands may be executed therein, in the same way and manner as if no jurisdiction had been hereby ceded. All lands and tenements which may be granted as aforesaid to the United States shall be and continue so long as the same shall be used for the purposes in this section mentioned, exonerated and discharged from all taxes, assessment and other charges which may be imposed under the authority of the State of Maryland; provided, however, that the rights of citizenship and other rights as residents of Charles County of persons domiciled on land owe by the United States at Indian Head shall be continued and enjoyed by them to the same extent as now provided by law for persons domiciled at the Naval Academy at Annapolis as residents of Anne Arundel County.
An. Code, 1939, sec. 31. 1924, sec. 31 1912, sec. 31. 1906, ch. 743, sec. 1

31. The consent of the State of Maryland is hereby given in accordance with the seventeenth clause, eighth section of the first article of the constitution of the United States, to the acquisition by the United States by purchase, condemnation or otherwise of any land in this State required for sites for custom houses, courthouses, post offices, arsenals or other public buildings, whatever, or for any other purposes of the government.
An. Code, 1939, sec. 32. 1924, sec. 32. 1912, sec. 32. 1906, ch. 743, sec. 2

35. Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil

and criminal process of the courts of this State, but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. An. Code. 1939, sec. 33. 1924, sec. 33. 1912, sec. 33. 1906, ch. 743, sec. 3

26. The jurisdiction ceded shall not vest until the United States shall have acquired the title to said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county and municipal taxation, assessment, or other charges which may be levied or imposed the authority of this State.
1947 Supp., sec. 41. 1943, ch. 687

46. Notwithstanding anything contained in any of the sections of this Article to the contrary the State of Maryland hereby reserves as to all lands within the State hereafter acquired by the United States or any agency thereof, whether by purchase, lease, condemnation or otherwise, and as to all property, persons and transactions on any such lands, jurisdiction and authority to the fullest extent permitted by the Constitution of the United States and not inconsistent with the Governmental uses, purposes, and functions for which the land was acquired or is used. Nothing in this section shall be deemed or construed to restrict the jurisdiction and authority of the State over any lands heretofore acquired by the United States, or any agency thereof, or over property, persons or transactions on any such lands.

Laws of the State of Maryland, 1955--
CHAPTER 622 (House Bill 23)

An act to repeal and re-enact with amendments, Sections 76, 77, 78, 81, 82, 83, 84 and 91 of Article 16 of the Annotated Code of Maryland (1951 Edition and 1954 Supplement), title "Chancery", sub-title "Adoption", and to add new Section 80A to said Article and sub-title, to follow immediately after Section 80 thereof, generally revising the adoption laws of the State, and relating to adoption procedure, and correcting certain wording therein

SECTION 1. Be it enacted by the General Assembly of Maryland:
That Sections 76, 77, 78, 81, 82, 83, 84 and 91 of Article 16 of the Annotated Code of Maryland (1951 Edition and 1954 Supplement), and re-enacted, with amendments, and that new Section 80A be and it is hereby added to said Article and sub-title, to follow immediately after Section 80 thereof, all to read as follows:

ADOPTION

* * *

78. (Federal Reservations.) All persons residing or stationed for not less than ninety (90) days next preceding the filing of a petition

on property lying within the physical boundaries of any county of this State or within the boundaries of the City of Baltimore, but on property over which jurisdiction is exercised by the Government of the United States by virtue of the 17th Clause, Section 8 of Article 1 of the Constitution of the United States, and of Sections 31 and 35 of Article 96 of this Code, shall be considered as residents of the State of Maryland and of the county or City of Baltimore, as the case may be, in which the land is situate, for the purposes of jurisdiction in the courts of equity of this State in all petitions for adoption.

MASSACHUSETTS

The General Laws of the Commonwealth of Massachusetts, Tercentenary Edition, 1932, title 1, chapter 1, sections--
SECTION 2. The sovereignty and jurisdiction of the commonwealth shall extend to all places within its boundaries subject to the concurrent jurisdiction granted over places ceded to or acquired by the United States.

SECTION 6. The department, with the approval of the governor and council, may, upon the application of an agent of the United States, in the name and behalf of the commonwealth, convey to the United States the title of the commonwealth to any tract of land covered by navigable waters and necessary for the purpose of erecting a lighthouse, beacon light, range light or other aid to navigation, or light keeper's dwelling; but such title shall revert to the commonwealth if such land ceases to be used for such purpose.

SECTION 7. The United States shall have jurisdiction over any tract of land within the commonwealth acquired by it in fee for the following purposes: for the use of the United States bureau of fisheries, or for the erection of a marine hospital, custom office, post office, life-saving station, lighthouse, beacon light, range light, light keeper's dwelling or signors; provided, that a suitable plan of such tract has been or shall be filed in the office of the state secretary within one year after such acquisition of title thereto. But the commonwealth shall retain concurrent jurisdiction with the United States in and over any such tract of land to the extent that all civil and criminal processes issuing under authority of the commonwealth may be executed thereon as if there had been no cession of jurisdiction, and exclusive jurisdiction over any such tract shall revest in the commonwealth if such tract ceases to be used by the United States for such public purpose.

MICHIGAN

The Compiled Laws of the State of Michigan, 1948
Act 3, 1942 (1st Ex. Sec.) p. 11; Imd. Eff. Jan. 28

An act to cede jurisdiction to the United States over certain lands, and for the purchase and condemnation thereof; and to repeal all acts and parts of acts inconsistent with this act

The People of the State of Michigan enact:

3.201 Ceding of jurisdiction to federal government of needed property.--SEC. 1. The consent of the state of Michigan is hereby given in accordance with the seventeenth clause, eighth section, of the first article of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state which has been, or may hereafter be acquired for forts, magazines, arsenals, dockyards and other needful buildings.

3.202 Same; transfer of jurisdiction; exemption from taxation.--SEC. 3. That whenever the United States of America desire to acquire title to land belonging to the state of Michigan including land which is now or has in the past been covered by the navigable waters of the United States of America, for sites or for any improvement or addition to any government area, reservation,

or other station including but not limited to military or naval reservations or stations, lighthouses, beacons, or other aids to navigation and/or aeronautics or for the building of sea walls, breakwaters, ramps, and piers, and application is made by a duly

authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the title to the United States, and to cede to the United States jurisdiction over the same: Provided, The state shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the state, may be executed by the proper officers thereof upon any person or persons amenable to the same within the limits of land so ceded, in like manner and to like effect as if this act had never been passed.

Act 5, 1874,p. 5; Imd. Eff. March 24

An act to cede jurisdiction to the United States on certain land, and for the purchase and condemnation thereof

The People of the State of Michigan enact:

3.321 Purchase or condemnation of lands by the United States.--SEC. 1. That the United States of America shall have power to purchase or to condemn in the manner prescribed by its laws, upon making just compensation therefor, land in the state of Michigan required for custom houses, arsenals, lighthouses, national cemeteries, or for other purposes of the government of the United States.

History: How. 5202.--C.L. 1897, 1149.--C.L. 1915, 234.--C.L. 1929, 410.

3.322 Same; entry, exclusive legislation,concurrent jurisdiction, exemption from taxes.--SEC. 2. The United States may enter upon and occupy any land which may have been, or may be purchased, or condemned, or otherwise acquired, and shall have the right of exclusive legislation, and concurrent jurisdiction together with the state of Michigan, over such land and the structures thereon, and shall hold the same exempt from all state, county and municipal taxation.

Act 52, 1871, p. 63; Imd. Eff. March 29

An act ceding the jurisdiction of this state over certain lands owned by the United States

The People of the State of Michigan enact:

3.341 Jurisdiction ceded to United States; execution of process.--SEC. 1. That the jurisdiction of this state is hereby ceded to the United States of America, over all such pieces or parcels of land within the limits of this state, as have been or shall hereafter be selected and acquired by the United States, for the purpose of erecting post offices, custom houses or other structures exclusively owned by the general

government, and used for its purposes: Provided, That an accurate description and plat of such lands so acquired, verified by the oath of some officer of the government having knowledge of the facts, shall be filed with the governor of this state: And provided further, That this cession is upon the express condition that the state of Michigan shall so far retain concurrent jurisdiction with the United States, in and over all lands acquired or hereafter acquired as aforesaid, that

all civil and criminal process issued by any court of competent jurisdiction or officers having authority of law to issue such process, and all orders made by such court, or any judicial officer duly empowered to make such orders, and necessary to be served upon any person, may be executed upon said lands, and in the buildings that may be erected thereon, in the same way and manner, as if jurisdiction had not been ceded, as aforesaid.

3.342 Lands exempt from taxes.--SEC. 2. The lands aforesaid, when so acquired, shall forever be exempt from all taxes and assessments, so long as the same shall remain the property of the United States.

MINNESOTA

Minnesota Statutes Annotated sections--

1.041 Concurrent jurisdiction of state and United States.--Subdivision 1. Rights of State.--Except as otherwise expressly provided, the jurisdiction of the United States over any land or other property within this state now owned or hereafter acquired for national purposes is concurrent with and subject to the jurisdiction and right of the state to cause its civil and criminal process to be executed therein, to punish offenses against its laws committed therein, and to protect, regulate, control, and dispose of any property of the state therein.

Subd. 2. Land exchange commission may concur.--In any case not otherwise provided for, the consent of the State of Minnesota to the acquisition by the United States of any land or right or interest therein, in this state desired for any authorized national purpose, with concurrent jurisdiction as defined in subdivision 1, may be given by concurrence of a majority of the members of the Land Exchange Commission created by the Constitution of the State of Minnesota, Article 8, Section 8, upon finding that such acquisition for such consent is made by an authorized officer of the United States, setting forth a description of the property, with a map when necessary for proper identification thereof, and the authority for, purpose of , and method used or to be used in acquiring the same. The commission may pre-

scribe the use of any specified method of acquisition as a condition of such consent.

In case of acquisition by purchase or gift, such consent shall be obtained prior to the execution of any instrument conveying the lands involved or any interest therein to the United States. In case of condemnation, such consent shall be obtained prior to the commencement of any proceeding therefor.

1.042 Consent of state.--Subdivision 1. Given for Certain Purposes. The consent of the State of Minnesota is hereby given in accordance with the Constitution of the United States, Article I, Section 8, Clause 17, to the acquisition by the United States in any manner of any land or right or interest therein in this state required for sites for customs houses, courthouses, hospitals, sanatoriums, post-offices, prisons, reformatories, jails, forestry depots, supply houses, or offices, aviation fields or stations, radio stations, military or naval camps, bases, stations, arsenals, depots, terminals, cantonments, storage places, target ranges, or any other military or naval purpose of the United States.

Subd. 2. Jurisdiction ceded to United States. So far as exclusive jurisdiction in or over any place in this state now owned or hereafter acquired by the United States for any purpose specified in subdivision 1 is required by or under the constitution or laws of the United States, such jurisdiction is hereby ceded to the United States, subject to the right of the state to cause its civil and criminal process to be executed on the premises, which right is hereby reserved to the state. When the premises abut upon the navigable waters of this state, such jurisdiction shall extend to and include the under-water lands adjacent thereto lying between the line of low-water mark and the bulkhead or pier-head line as now or hereafter established.

1.043 When jurisdiction vests.--The jurisdiction granted or ceded to the United States over any place n the state under section 1.041 or section 1.042 shall not vest until the United States has acquired the title to or right of possession of the premises affected, and shall continue only while the United States owns or occupies the same for the purpose or purposes to which such jurisdiction appertains as specified in those sections.

1.046 Evidence of consent.--The consent of the state given by or pursuant to the provisions of sections 1.041 to 1.048 to the acquisition by the United States of any land or right or interest therein in this state or to the exercise of jurisdiction over any place in this state shall be evidenced by the certificate of the governor, which shall be issued in duplicate, under the great seal of the state, upon application by an authorized officer of the United States and upon proof that title to the property has vested in the United States. The certificate shall

set forth a description of the property, the authority for, purpose of, and method use in acquiring the same, and the conditions of the jurisdiction of the state and the United States in and over the same, and shall declare the consent of the state thereto in accordance with the provisions of sections 1.041 to 1.048, as the case may require. When necessary for proper identification of the property a map may be attached to the certificate, and the applicant may be required to furnish the same. One duplicate of the certificate shall be filed with the secretary of state. The other shall be delivered to the applicant, who shall cause the same to be recorded in the office of the register of deeds of each county in which the land or any part thereof is situated.

MISSISSIPPI

Mississippi Code 1943, Annotated, title 17, chapter 11, sections--Sec. 4153. United States may acquire land for certain purposes.--The consent of the state of Mississippi is given, in accordance with the 17th clause, 8th section, and of the 1st article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land in this state which has heretofore been or may hereafter be acquired for custom houses, post officers, or other public buildings.

Sec. 4154. Jurisdiction.--The exclusive jurisdiction in and over any land which has heretofore been, or may hereafter be, so acquired by the United States is hereby ceded to the United States for all purposes, except that the state retains the right to serve thereon all civil and criminal processes issued under authority of the state; but

the jurisdiction so ceded shall continue no longer than the United States shall own such lands, for the purposes hereinabove set forth.

Sec. 4155. Tax exemption.--The jurisdiction ceded as aforesaid shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation, or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be exempt from all state, county and municipal taxation, assessment, or other charges which may be levied or imposed under authority of the state.

Sec. 4157. May cede jurisdiction to United States for certain purposes.--The governor, upon application made to him in writing, on behalf of the United States, for the purpose of acquiring and holding lands or using any part of a public road of any county within the limits of this state, for the purpose of making, building, or construction levees, canals, or any other works in connection with the improvement of rivers and harbors, or as a site for a fort, magazine, arsenal, dockyard, courthouse, custom house, lighthouse, post office, or other needful

buildings, or for the purpose of locating and maintaining national military parks, or for any other public works or purposes accompanied by proper evidence of the purchase of such lands, or the consent of the board of supervisors of the proper county for such public roads to be used for said purpose, is authorized for the state to cede jurisdiction thereof to the United States for the purpose of the cession and none other.

Sec. 4158. Restrictions on cession.--The concession of jurisdiction to the United States over any part of the territory of the state, heretofore or hereafter made, shall not prevent the execution on such land of any process, civil or criminal, under the authority of this state, nor prevent the laws of this state from operating over such land; saving to the United States security to its property within the limits of the jurisdiction under the authority of this state during the continuance of the cession.

Title 23, chapter 2, section--

Sec. 5926. Federal regulations, etc.--Consent is hereby given to the making by Congress of the United States, or under its authority, of all such rules and regulations as the Federal Government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the State of Mississippi as shall have been, or may hereafter be, purchased by the United States under the terms of the Act of Congress of March 1, 1911, entitled "An Act to enable any State to cooperate with any other State or with the United States for the protection of the watersheds of navigable streams and to appoint a Commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers," and Acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereof.

The Director of Conservation of the State of Mississippi shall have the right and authority to enter into a cooperative agreement with the United States Government, or with the proper authorities thereof, for the protection and management of the wild life resources of the national forest lands within he State of Mississippi and for the restocking of the same with desirable species of game, birds, and other animals, and fish.

The Director of conservation of the State of Mississippi shall have authority to close all hunting and fishing within said lands so

contracted for with the Federal Government for such period of time as may, in the opinion of the director of conservation, be necessary; shall have authority from time to time to prescribe the season for hunting or fishing therein, to fix the amount of fees required for special hunting licenses and to issue said licenses, to prescribe the number of animals and game, fish and birds that shall betaken therefrom and the

size thereof, and to prescribe the conditions under which the same may be taken.

Any person violating any of the rules so promulgated by the director of Conservation, or who shall hunt or fish on said lands at any time, other than those times specified by the said Director of Conservation, shall upon conviction therefor be fined no less than twenty-five ($25.00) dollars nor more than one hundred ($100.00) dollars, or imprisonment for not less than ten days nor more than thirty days for each and every offense.

Title 23, chapter 5, section--

Sec. 5964. Counties may donate rights of way--easements, etc.--The boards of supervisors of any county within the State of Mississippi through which or adjoining which the United States Government or any of its agencies desired to construct a roadway or a roadway and parkway in connection therewith, shall have full power to donate such rights of way, together with scenic easements of such additional lands as may be required by the United States Government for the purpose of constructing such roadway and parkway. Any and all counties in the State of Mississippi are authorized to receive by donation,gift,will,or by purchase with county funds any and all necessary lands, rights of way or scenic easements,and after the acquisition of such lands or scenic easements may, by resolution or deed or other authorization of the board of supervisors of such county, convey same to the United States or to such subordinate agency of the United States as may be required for the establishment of such roadway and parkway. The board of supervisors of any county in the State of Mississippi is hereby expressly vested with the power of eminent domain to condemn for public use as a park and for scenic easement all lands adjoining such public park or parkway and for road or roadways and to acquire title to all or any part of the lands which such board of supervisors may deem necessary for the purposes of complying with the requirements of the United States Government in the establishment of any national roadway or parkway through the State of Mississippi and that such right of condemnation shall include the right to condemn houses, out buildings, orchards, yards, gardens, and other improvement on such lands and all or any right, title, or interest in and to all or any part of such lands and the improvements thereon by the right of eminent domain in condemnation proceedings or by gift,devise purchase, or any other lawful means for the transfer of title; and such condemnation proceedings shall be carried out and executed as are condemn nation proceedings by the Highway Department of the State of Mississippi as authorized under the laws of the State of Mississippi. The United States Government,

or any of its subsidiary agencies, shall have complete control and

supervision, severally or in connection with any county or counties in the State of Mississippi or with the Highway department of the State of Mississippi with full power and authority to locate, relocate, widen, alter, change, straighten, construct, or reconstruct roads or rights of way, parkways or lands covered by scenic easements on any Federal parkway, highway, or trace being constructed by the United States Government or any of its subsidiary subdivision or severally or jointly with any county or counties in the State of Mississippi or with the State Highway department of the State of Mississippi and shall have full and complete authority for the making of all contracts, surveys, plans, and specifications and estimates for the location, laying out, widening, straightening, altering, changing, constructing, reconstructing, and maintaining and securing rights of way therefor of any and all such highways, parkways, and scenic easements and shall further have the right to authorize its employees and agents to enter upon property for such purposes. The said United States Government severally and any county or counties in the State of Mississippi and the said Highway Department, either jointly or severally, is further authorized and empowered to obtain and pay for rights of way to such width and extent as may be necessary to meet the requirement of the United States Government for the construction and building of new parkway or roadway or scenic highway in the State of Mississippi, such rights of way to average along said road, however, not more than one hundred (100) acres to the mile and, in addition thereto, scenic easements to average not more than fifty (50) acres to the mile along said roadway or parkway, and such political authorities, either jointly or severally shall have the right to condemn or acquire by gift or purchase lands necessary for the building and maintenance of said roadway, parkway, or trace.

Sec. 5970. Jurisdiction of the United States.--The United States of America is authorized to acquire by deed or conveyance, gift, will or otherwise lands for the purpose of roadways and parkways as set forth in this Act, but this consent is given upon condition that the State of Mississippi shall retain a concurrent jurisdiction with the United States in and over such lands so far that civil process in all cases and such criminal process as may issue under the authority of the State of Mississippi against any person charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been given. Power is hereby conferred on the Congress of the United States to pass such laws as it may deem necessary for the acquisition of the said lands and for incorporation in national roadways, parkways or na-

tional parks, and to pass such laws and make or provide for the making of such rules and regulations, of both civil and criminal nature, and to provide punishment therefor as in its judgment may be necessary for the management, control and protection of such lands as may be acquired by the United States under the provisions of this Act, including such lands are acquired not only for highway and parkway and park purposes but also those lands over which scenic easements are acquired for such purposes, provided, notifies the Governor and, through him, the State of Mississippi that the United States of America assumes concurrent police jurisdiction over the land or lands thus deeded and conveyed. But, however, thee is saved to the State of Mississippi the right to tax sales of gasoline and other motor vehicle fuels and oils for use in motor vehicles and to tax persons and corporations, their franchises and properties, on all and or lands

deeded or conveyed as aforesaid,and saving, except to persons residing in or on any of the land or lands deeded or conveyed as aforesaid, the right to vote at all elections within the county in which said land or lands are located, upon like terms and conditions and to the same extent as they would be entitled to vote in such county had not such lands been deeded or conveyed as aforesaid to the United States of America.

Sources: Laws, 1935, ch. 52.

MISSOURI

Vernon's Annotated Missouri Statutes, chapter 12, section--

12.010. Consent given United States to acquire land by purchase for certain purposes.--The consent of thee state of Missouri is hereby given in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States to the acquisition by the United States by purchase or grant of any land in this state which has been or may hereafter be acquired, for the purpose of establishing and maintaining post offices, internal revenue and other government offices, hospitals, sanatoriums, fish hatcheries, and land for reforestation, recreational and agricultural uses. Land to be used exclusively for the erection of hospitals by the United States may also be acquired by condemnation (R.S. 1939, Sec. 12691, A.L. 1949, p. 316, A. S.B. 1005).

12.020. Jurisdiction given with reservations.--The jurisdiction of the state of Missouri in and overall such land purchased or acquired as provided in section 12.010 is hereby granted and ceded to the United States shall own said land; pro-

vided, that there is hereby reserved to the state of Missouri, unimpaired, full authority to serve and execute all process, civil and criminal, issued under the authority of the state within such lands or the buildings thereon (R.S. 1939, Sec. 12693).

12.030. Consent given United States to acquire land by purchase or condemnation for military purposes.--The consent of the state of Missouri is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, or the effective date of sections 12.030 and 12.040, as sites for customhouses, courthouses, post offices, arsenals, forts, and other needful buildings required for military purposes. Laws 1955, H.B. No. 371, Sec. 1.

12.040. Exclusive jurisdiction ceded to the United States--reserving the right of taxation and the right to serve processes.--Exclusive jurisdiction in and over any land so acquired, prior to the effective date of sections 12.030 and 12.040, by the United States shall be, and the same is hereby, ceded to the United States for all purposes, saving and reserving, however, to the state of Missouri the right of taxation to the same extent and in the same manner as if this cession had not been made; and further saving and reserving to the state of Missouri the right to serve thereon any civil or criminal process issued under the authority of the state, in any action on account of rights acquired, obligations incurred, or crimes committed in said state, outside the boundaries of such land but the jurisdiction so ceded to the United States shall continue no longer than the said United States shall own such lands and use the same for

the purpose for which they were acquired. Laws 1955, H.B. No. 371, Sec. 2.

MONTANA

Constitution of the State of Montana, article II, section--

SECTION. 1. Authority is hereby granted to and acknowledged in the United States to exercise exclusive legislation, as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effects if said reservations had been purchased by the United States by consent of the legislative assembly of the State of Montana; and the legislative assembly is authorized and directed to enact any law necessary or proper to give effect to this article.

Provided, that there be and is hereby reserved to the State the right to serve all legal process of the State, both civil and criminal, upon persons and property found within any of said reservations, in all cases where the United States has not exclusive jurisdiction.

Revised Codes of Montana, 1947, Annotated, title 83, chapter 1, sections--

83-102. (20) Territorial jurisdiction, limitations on.--The sovereignty and jurisdiction of this State extend to all places within its boundaries, as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States; but the extent of such jurisdiction over places that have been or may be ceded to, purchased,or condemned by the United States, is qualified by the terms of such cession,or the laws under which such purchase or condemnation has been or may be made.

83-103. (20) Military reservations.--Authority is granted to and acknowledged in the United States to exercise exclusive legislation,as provided by the constitution of the United States, over military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservation, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the State of Montana.

All legal process of the State, both civil and criminal, may be served upon persons and property found within any of said reservations,or on any Indian reservation, in all cases where the United States has not exclusive jurisdiction.

83-108. (25) Jurisdiction over lands purchased by United States.--Pursuant to article 1, section 8, paragraph 17 of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the complete purchase by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state, within the limits of the

territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to

the state and its inhabitants and citizens the right to fish and hunt, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state on Montana jurisdiction in he enforcement of state laws relating to the duties of the livestock sanitary board and the state board of health, and the enforcement of any regulations promulgated by said boards in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest United States, though the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city, and the filing of such map as herein provided, shall constitute acceptance of the jurisdiction by the United States as herein ceded. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitle: "An act giving the consent of the state of Montana to the purchase, by the United States, of land in any city or town of the state, for the purpose of United States court house, post office and for other purposes" approved March 5, 1891, as amended by the act giving the consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purposes of United States court house, post-offices and for other like purposes", approved March 9, 1803, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

NEBRASKA

Revised Status of Nebraska, 1943, article 6, section--

72-601. State lands; consent to purchase granted United States.--The consent of the State of Nebraska is granted to the United States of America to purchase such grounds as may be deemed necessary in any city or incorporated town in the State of Nebraska, for the erection thereon of buildings for the accommodation of the United States circuit and district courts, post office, land office, mints, or any other government office, and also for the purchase by the United States of such other lands within the State of Nebraska as the agents or author-

ities of the United States may from time to time select for the erection of forts, magazines, arsenals and other needful buildings.

72-602. State lands; conveyance to United States; cession of jurisdiction.--The jurisdiction of the United of Nebraska in and over the lands mentioned in section 72-601 shall be ceded to the United States; Provided, the jurisdiction ceded continue no longer than the United States shall own or occupy such lands.

72-603. State lands; sale to United States; service of process; jurisdiction retained.--The consent is given is given and the jurisdiction ceded upon the express condition that the State of Nebraska shall retain concurrent jurisdiction with the United States in and over the lands, so far as civil process in all cases, and such criminal or other process as may issue under the laws or authority of the State of Nebraska, against any person or persons charged with crime or misdemeanors committed within this state, may be executed therein in the same way and manner as if such consent had not been given or jurisdiction ceded, except so far as such process may affect the real and personal property of the United States.

72-604. State lands; conveyance to United States; jurisdiction; when effective; exemption from taxation.--The jurisdiction ceded shall not vest until the United States shall have acquired the title to such lands by purchase or grant. So long as the lands shall remain the property of the United States, when acquired as provided in section 72-601, and no longer, they shall be exempt from all taxes, assessments, and other charges which may be levied or imposed under the authority of the laws of this state.

NEVADA

Statutes of the State of Nevada, 1955, chapter 202, page 300--
Assembly Bill No. 13. Mr. Leighton--Chapter 202

An act granting the consent of the State of Nevada to the acquisition by the United States of lands required for public purposes, and ceding jurisdiction over such lands heretofore and hereafter acquired, leased or otherwise used by the United States for public purposes; repealing a part of an act in conflict herewith; and other matters property relating thereto

[Approved March 22, 1955]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. State consent to Federal acquisition of land required by department of Defense or Atomic Energy Commission.--The consent of the State of Nevada is hereby given in accordance with the 17th Clause, 8th Section of the 1st Article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, lease, exchange or otherwise, of any land in this state required

by the Department of Defense or the Atomic Energy Commission for the erection of bases, forts, magazines, arsenals, dockyards and other structures needed for defense or Atomic Energy Commission purposes as authorized by act of Congress.

SEC. 2. Jurisdiction ceded to United States; reservation:

1. The State of Nevada, except as hereinafter reserved and provided, after so acquired; or

(a) Over any land in this state which has been or may be hereafter so acquired; or

(b) Over any land in this state which has been or may be hereafter acquired by exchange for any of the purposes stated in section 1; and

(c) Over any land in this state which is now or may be hereafter held by the United States under lease, easement, license, use permit or otherwise for any of the purposes stated in section 1; and

(d) Over any land in this state which has been or may be hereafter reserved from the public domain, or other land of the United States for any of the purposes stated in section 1;

but the jurisdiction so ceded shall continue no longer than the United States shall own, hold or reserve such land for any of the purposes stated in section 1.

2. The United States shall at the time of the acceptance by the United States of the jurisdiction ceded by this act cause to be recorded a map or drawing of the installation, and a perimeter description thereof in the official records of the county or counties in which the lands comprising the affected installation are situate.

SEC. 3. Taxation.--It is hereby reserved and provided by the State of Nevada that any private property upon the lands or premises shall be subject to taxation by the state or any legal subdivision thereof having the right to levy and collect such tax, but any property upon or within such premises which belongs to the government of the United States shall be free of taxation by the state and any of its legal subdivisions.

SEC. 4. Service of process.--The State of Nevada reserves the right to serve or cause to be served, by any of its proper officers, any criminal or civil process upon such land or within such premises for any cause there or elsewhere in the state arising, where such cause properly under the jurisdiction of the laws of this state or any legal subdivision thereof.

SEC. 5. Supplementary act; repeal.--This act shall be deemed supplementary to that certain act entitled "An Act providing a method for the consent of the state to the acquisition by the United States of America of land and water rights; providing for the tax commission to be sole bargaining agency in matters of taxation with the federal

government, and matters related thereto," approved March 27, 1947, and being chapter 108, Statutes of Nevada 1947, at page 405, and, for the specific purposes only set forth in section 1 of this act, shall be deemed a repeal of chapter 108, Statutes of Nevada 1947.

SEC. Effective date.--This act shall become effective upon passage and approval.

Nevada Compiled Laws, Supplement 1943--49--

Authorizing acquisition of land by Federal Government for certain purposes An act providing a method for the consent of the state to the acquisition by the United States of America of land and water rights; providing for the tax commission to be sole bargaining agency in matters of taxation with the Federal government, and matters related thereto

[Approved March 27, 1947, 405]

Sec. 2898.01. State consent to acquisition of land by United States for certain purposes.--Sec. 1. The consent of the State of Nevada to the acquisition by the United States of America of any land or water right or interest therein in this state, except lands or water rights located within the boundaries of established and existing national forests, desired for any purpose expressly stated in clause 17 of section 8 of article I of the constitution of the United States, may be given by concurrence of a majority of the members of the state tax commission, which majority shall include the governor of the state, upon finding that such proposed acquisition and the method thereof and all other matters pertaining thereto are consistent with the best interests of the state and conforms to the provisions of this act.

Sec. 2898.02. State consent to acquisition for reclamation projects, flood-control projects, protection of watersheds, right of way for public roads and other purposes.--Sec. 2. The consent of the State of Nevada in accordance with the principles set forth in paragraph one hereof, and subject to the limitations and restrictions of this act, may also be given by concurrence of the said majority of the members of the state tax commission in cases where privately owned or state-owned real property is desired by the United States for reclamation projects, flood control projects, protection of watersheds, right-of-way for public roads, and other purposes.

Sec. 2898.3. Right of taxation reserved.--Sec. 3. The consent of the State of Nevada to any acquisition pursuant to section 2 hereof, shall be subject to and the state does hereby reserve the right of taxation to itself and to its municipal corporations and taxing agencies, and reserves to all persons now or hereafter residing upon such land all political and civil rights, including the right of suffrage.

Sec. 2898.06. Authority of tax commission.--Sec. 6. The authority herein conferred upon the tax commission to give or withhold the consent of

the State, shall include all acquisitions of all real property or of rights therein, including water rights of every nature whatsoever, by the United States including gifts.

Sec. 2898.11. Conditions and requirements of consent to acquisition.--Sec. 11. The consent of the state in all such cases shall be conditioned upon the following requirements having been complied with and shall be based upon such other factors as the commission in its discretion may take into consideration in the making of its decision.

1. The United States, by a statute then in force and effect must have provided, and must be ready, able, and willing to make tax payments or in lieu of tax payments upon said premises, including the improvements to be placed thereon at the rate that other similar property in the county is taxed, said payments to continue so long as the ownership of the United States continues, said tax payments to be apportioned amongst the state and all municipal corporations and taxing agencies thereof, which would otherwise have the right to tax said property from time to time, if it were in private ownership. The tax commission shall be the sole bargaining agency in matters of taxation between the state, its political subdivisions, and the federal government, and shall determine the ratio of distribution among the payees which the federal government shall hereby be required

to pay; provided, however, no tax shall be demanded hereunder upon a right-of-way for a public road or post office or for any purpose expressly stated in article 1, section 8, clause 17, of the constitution of the United States.

2. The board of county commissioners of each and every county to be affected by each requested acquisition must have given it or their written consent to said tax commission to said acquisition. Said consent shall be expressed by resolution duly adopted an entered in its journal.

3. The United States of America must have consented in writing to the levying and collection of all taxes to which any business, construction contractor, or any other enterprise or occupation thereafter conducted or operated upon said premises would be subject if the property were to remain in private ownership.

4. When it appears to the state tax commission and the county commission of the county or counties affected that the purpose for such purchase of land by the United States is to the best interests of the general public, tax payments or in lieu tax payments may be waived.

Sec. 2896.12. State reserves jurisdiction to serve process of courts--civil and criminal jurisdiction of courts--civil and political rights reserved.--Sec. 12. In granting its consent to any request or application

which may be filed with the tax commission pursuant to this act, the state reserves jurisdiction in all cases, except for acquisitions for land desired for the purposes expressly provided for in article I, section 8, clause 17, of the constitution of the United States and as to such lands the state reserves the right to serve its civil and criminal process upon persons for violations of the laws of this state occurring elsewhere in the state; that as to all other requests and applications for the acquisition of land by the United States under the provisions of this act, the state reserves jurisdiction over all offenses of a criminal nature and as to all cases arising under the civil laws of this state committed or had upon the land so applied for, and also reserves the right for the execution of all civil and criminal process on such land, and the state reserves its entire power of taxation, including that of each municipal corporation and taxing agency upon and concerning said land, and the state reserves to all persons residing on such land all civil and political rights, including the right of suffrage, which they may have had were said acquisitions not so made; provided, in all cases of acquisitions of land under this act there shall be reserved to the state the right to control, maintain, and operate all state highways constructed upon such land. The reservations set forth in this section shall be recited in the certificate provided for in section 13 hereof.

NEW HAMPSHIRE

Laws of the State of New Hampshire, 1955, chapter 223, page 333-An act relative to jurisdiction of the United States over land within New Hampshire

Be it enacted by the Senate and House of Representatives in General Court convened:

1. Jurisdiction of the United States.--Amend Revised Laws, chapter

1, section 1 (section 1, chapter 123, RSA) by inserting after the word "custom-houses" in the third line of said section, the words, military air bases, military installations, so that said section as amended shall read as follows: 1. Ceded to United States. Jurisdiction is ceded to the United States of America over all lands within this state now or hereafter exclusively owned by the United States, and used as sites for post offices, custom-houses, military air bases, that an accurate description and plan of the lands so owned and occupied, verified by the oath of some officer of the United States having knowledge of the facts, shall be filed with the secretary of this state; and, provided, further, that this session is upon the express condition that the state of New Hampshire shall retain concurrent jurisdiction with the United States in and over all such lands, so far that all civil and criminal process issuing under the

authority of this state may be executed on the said lands and in any building now or hereafter erected thereon, in the same way and with the same effect as if this statute had not been enacted; and that exclusive jurisdiction shall revert to and revest in this state whenever the lands shall cease to be the property of the United States.

2. Takes effect.--This act shall take effect upon its passage.

[Approved June 23, 1955.]

NEW JERSEY

New Jersey Statutes Annotated, title 52, chapter 30, section--

52:30-1. Consent to acquisition of land by United States.--The consent of this state is hereby given, pursuant to the provisions of article one, section eight, paragraph seventeen, of the constitution of the United States, to the acquisition by the United States, by purchase, condemnation or otherwise, of any land within this state, for the erection of dockyards, custom houses, courthouses, post offices or other needful buildings.

52:30-2. Jurisdiction over lands acquired.--Exclusive jurisdiction in and over any land so acquired by the United States is hereby ceded to the United States for all purposes except the service of process issued out off any of the courts of this state in any civil or criminal proceeding.

Such jurisdiction shall not vest until the United States shall have actually acquired ownership of said lands, and shall continue only so long as the United States shall retain ownership of said lands.

52:30-3. Lands exempt from taxes.--So long as said lands shall remain in the ownership of the United States the same shall be exempt from all taxes, assessments, or other charges leviable by this state or any of its municipalities.

NEW MEXICO

New Mexico Statutes, 1953, Annotated, chapter 3, article 1, section--

3-1-1. Definitions.--The provisions of chapter 41, New Mexico Statutes Annotated, Compilation of 1929, and the amendments thereof and this chapter shall be known as the "Election Code" and may be so designated in this act and in any legislative act applicable thereto.

As used in this act, unless the context requires otherwise: The

words "qualified elector," "elector" or "voter" means any citizen of the United States who at the date of the election will be over the age of twenty-one (21) years and will have resided in the state twelve (12) months, in the county ninety (90) days, and in the precinct in which he offers to vote thirty (30) days, next preceding the election, except idiots, insane persons, persons convicted of a felonious or infamous crime unless restored to political rights.

Residence within the meaning of the above paragraph shall be residence upon land privately owned, or owned by the state of New Mexico, any county or municipalities thereof; or upon lands originally belonging to the United States of America or ceded to the United States of America by the state of New Mexico, any county thereof, or any municipal corporation or private individual, by purchase, treaty, or otherwise.

* * *

Chapter 7, article 2, sections--

7-2-2. Consent to acquisition of land for Federal purposes.--The consent of the state of New Mexico is hereby given in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States to the accession by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom-houses, court-houses, post-offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

7-2-3-. Jurisdiction over Federal land--Limitations--Duration.--Exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands.

7-2-4-. Vesting of Federal jurisdiction--Tax exemption--Limitation.--The jurisdiction ceded shall not vest until the United States shall have acquired the title to said lands by purchase, condemnation, or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county, and municipal taxation, assessment, or other charges which may be levied or imposes under the authority of this state.

Chapter 22, article 7, section--

22-7-4. Residence requirement.--The plaintiff in action for the dissolution of the bonds of matrimony must have been an actual resident, in good faith, of the state for one (1) year next preceding the filing of his or her complaint; Provided, however, that in a suit for the dissolution of the bonds of matrimony wherein the wife is plaintiff, the residence of the husband in this state shall inure to her benefit and she may institute such action setting up any of the cause mentioned in section 2773 (25-701) [22-7-1] immediately after the accrual thereof, providing her husband shall have been qualified as to residence to military branch of the United States government who have been continuously stationed in any military base or installation in the state of

New Mexico for such period of one (1) year, shall for the purposes hereof, be deemed residents in good faith of the state and county where such military base or installation is located.

NEW YORK

McKinnley's Consolidated Laws of New York, Annotated, 1952, State Law,article 4, sections--

Sec. 35. Cession of jurisdiction to lands acquired for light-house purposes.--The jurisdiction to such tracts of land, not exceeding ten acres, acquired by the United States for the construction and maintenance of light-houses and keepers' dwellings before April eighteenth, eighteen hundred sixty-one, or as shall have been acquired since such date, or as shall be hereafter, upon the selection by an authorized officer of the United States, the approval of the governor, the filing in the office of the secretary of state of a description of the boundaries thereof, with the approval of the governor indorsed thereon, and the filing in such office of a map thereof, which map shall be drawn with pen and India ink upon tracing cloth and shall be otherwise inform and manner suitable to the files, records and purposes of the office of the secretary of state, is ceded to the United States, upon condition that the jurisdiction shall continue in the United States so long only as the land shall be used and occupied for the purposes of the cession, unless the consent of the state to a different use shall have been granted. As amended L. 1939, c. 521; L. 1944, c. 600, eff. April 6, 1944.

Sec. 36. Acquisition by condemnation.--When the United States shall have been authorized by law to acquire title to any real property within this state, such title may be acquired by gift or grant from the owners thereof, or by condemnation if, for any reason, the United States is unable to agree with the owners for the purchase thereof.

Sec. 50. Consent of state to purchase of land; authority to dispose of land to United States; record of conveyances.--1. The consent of the state of New York is hereby given to the purchase by the government of the United States, and under the authority of the same, of any tract, piece or parcel of land from any individual or individuals, bodies politic or corporate within the boundaries of this state, for the purpose of parade or maneuver grounds, aviation fields, navy yards and naval stations, or for the purpose of erecting thereon lighthouses, beacons, lighthouse keepers' dwellings, hospitals, sanatoriums, works for improving navigation, post offices, custom houses, fortifications, or

buildings and structures for the storage, manufacture or production of supplies, ordinance, apparatus or equipment of any kind whatsoever for the use of the army or navy and any other needful buildings and structures.

2. In addition to the consent to purchase given in subdivision one of this section, the consent of the state is hereby given to the acquisition by exchange, donation or otherwise by the government of the United States, and under the authority of the same, of any tract, piece or parcel of land from any county, city, town or village within this state for the purpose of parade or maneuver grounds or aviation

fields, and every such county, city, town or village is hereby authorized and empowered to sell, exchange, donate or otherwise dispose of such tract, piece or parcel of land to the United States for such purpose or purposes; and all deeds,conveyances or other papers.

3. All deeds, conveyances or other papers relating to the title of any such lands acquired by the United States as authorized in this section shall be recorded in the office of the register, if any, or if not in the office of the county clerk, of the county where the said lands are situated. As amended L. 1910, c. 109, Sec. 1; L. 1911, c. 527, Sec. 1; L. 1917, c. 819, Sec. 1922, c. 14; L. 1941, c. 568, eff. April 19, 1941.

Sec. 52. Governor may execute deed or release.--Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, or the administrator of veterans' affairs of the government of the United States, shall cause to be filed in the office of the secretary of state of the state of New York, maps or plats and descriptions by metes and bounds of any tracts or parcels of land within this state, which have been acquired by the United States for any of the purposes aforesaid, and a certificate of the attorney general of the United States that the United States is in possession of said lands and premises for either of the works or purposes aforesaid, under a clear and complete title the governor of this state is authorized, of he deems it proper, to execute in duplicate, in the name of the state and under its great seal, a deed or release of the state ceding to the United States the jurisdiction of said tracts or parcels of land as hereinafter provided. Such maps shall be drawn with pen and India ink upon tracing cloth and shall be otherwise inform and manner suitable to the files, records and purposes of the office of the secretary of state, and show such data thereon, or in relation thereto, s may be required by the secretary of state. As amended L. 1939, c. 521; L. 1944, c. 600; L. 1946, c. 839, eff. April 17, 1946.

Sec. 53. Concurrent jurisdiction as to service of process.--The said jurisdiction so ceded shall be upon the express condition that the state

of New York shall retain concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process,which may issue under the laws or authority of the state of New York,may be executed thereon in the same way and manner as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States.

Sec. 54. Exemption of property from State taxation.--The said property shall be and continue forever thereafter exonerated and discharged from all taxes, assessments and other charges, which may be levied or imposes under the authority of this state; but the jurisdiction hereby ceded and the exemption from taxation hereby granted, shall continue in respect to said property so long as the same shall remain the property of the United States, and be used for the proposes aforesaid, and no longer.

Sec. 55. Delivery and filing of deeds and releases.--One of the deeds or releases so executed in duplicate shall be delivered to the duly authorized agent of the United States, and the other deed or release shall be filed and recorded in the office of the secretary of state of the state of New York; and said deed or release shall become

valid and effectual only upon such filing and recording in said office. As amended L. 1909, c. 240, Sec. 76, eff. April 22, 1909.

Sec. 56. Statement to be published in session lance.--The secretary of state shall cause to be printed in the session laws of the year succeeding the filing in his office of said deed, a statement of the date of the application of the United States for said deed and a copy of the description of the lands so conveyed or ceded, together with the date of the recording of said deed in the office of the said secretary of state.

Sec. 57. Article not to apply to Orange County; exception.--This article shall not apply to the county of Orange, except with respect to a certain tract, piece or parcel of land in the town of Newburgh in such county containing two hundred twenty-one and eight-tenths acres more or less, commonly known and designated both as Newburgh airport and as Stewart field, and except with respect to additional lands adjoining and contiguous to such airport and field, as now constituted, aggregating not more than one thousand acres, and also except width respect to lands in the town of Cornwall adjoining and contiguous to lands in such town now owned by the United States and to state highway number eighty-five hundred, part one, aggregating not more than two and one-half acres. As amended L. 1940, c. 214; L. 1941, c. 178, eff. March 27, 1941.

Sec. 58. Lands to be acquired; commission.--Whenever any lands, structures or waters, situated within the boundaries of this state, are,

in the judgment of the governor, necessary for purposes of public defense, or for other public purposes incidental thereto including public highway purposes, the estates, titles and interests in and to such lands, structures or waters, belonging to or vested in any person, corporation or municipality, may be acquired by the state as provided in this article. If any of such lands are, in the judgment of the governor, needed for public highway purposes leading to, from, across or around such appropriated lands, such estate as may in his judgment be necessary therefor may be acquired in such strips of lands, not exceeding one hundred feet in width, as in his judgment are needed for such purposes. The governor shall, whenever lands, structures or waters, to be designated by him, are required for such purposes, direct the adjutant-general, attorney-general, and the superintendent of public works, to take such actions and institute such proceedings as may be necessary to acquire such lands and easements in the name and for the benefit of the people of the state. Such officers when so directed are in each instance hereby constituted a temporary commission for the purpose of acquiring title to the lands so designated and the structures and waters thereon. Added L. 1917, c. 13; amended L. 1917, c. 130; L. 1928, c. 380, eff. March 16, 1928.

Sec. 59-c. Searches of title.--The attorney-general shall furnish to the commission all searches necessary to prove the title to the lands taken as provided in this article. The expense of making such searches shall be paid from the treasury out of the funds appropriated therefor, on the audit and warrant of the comptroller. Added L. 1917, c. 13; amended L. 1917, c. 13; amended L. 1917, c. 130; L. 1928, c. 380, eff. March 16, 1928.

Sec. 59-d. Searches of title.--The attorney-general shall furnish to the commission all searches necessary to prove the title to the lands taken as provided in this article. The expense of making such searches shall be paid from the treasury out of the funds appropriated

therefor, on the audit and warrant of the comptroller. Added L. 1917, c. 130; amended L. 1928, c. 380, Sec. 2, eff. March 16, 1928.

Sec. 59-e. Deed or release of land so acquired to United States.--The governor may, if requested by any officer or agent of the United States duly authorized under the hand and seal of any head of an executive department of the government of the United States, execute a deed or release to the government of the United States of the lands and the structures and waters thereon, described in the survey and map filed in the office of the secretary of state as hereinbefore provided, excepting and reserving therefrom an easement for public highway

purposes in and over the lands acquired for highway purposes pursuant to this article. Such deed or release may be so executed at any time after the commission shall have entered upon and taken possession of such lands, structures and waters. Such deed or release shall be in the form agreed upon by the governor and the proper representative of the government of the United States and shall convey title to the lands, structures and waters described therein to the government of the United States, to be used for purposes of public defense and shall cede to the United States the jurisdiction over the tracts or parcels of land so described, to the extent and in the manner hereinafter provided. Such deed or release shall be executed in duplicate in the name of the state and under its great seal. One of such duplicates shall be filed and recorded in the office of the secretary of state of the state of New York, and the other shall be delivered to the proper executive department of the government of the United States. Formerly Sec. 59-d, added L. 1917, c. 13; renumbered 59-e and amended L. 1917, c. 130, eff. April 4, 1917.

Sec. 59-f. Concurrent jurisdiction as to service of process.--The jurisdiction so ceded shall be upon the express condition that the state of New York shall retain concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the state of New York, may be executed thereon in the same manner as if such jurisdiction had not been ceded, except so far as such process may affect the real or personal property of the United States. Formerly Sec. 59-e, added by L. 1917, c. 13; renumbered 59-f, L. 1917, c. 130, eff. April 4, 1917.

Sec. 59-g. Exemption of property from State taxation.--The property so conveyed and released to the United States shall be exempted from all taxes, assessments and other charges, which may be levied or imposed under the authority of this state; but the jurisdiction hereby ceded and the exemption from taxation hereby granted shall continue in respect to such property so long as the same shall remain the property of the United States and be used for purposes of public defense, and no longer. Formerly Sec. 59-f, added L. 1917, c. 13; renumbered 59-g, L. 1917, c. 130, eff. April 4, 1917.

Sec. 59-h. Statement to be published in session laws.--The secretary of state shall cause to be printed in the session laws of the year succeeding the filing in his office of deed, a statement of the date of the filing of the survey and map of the lands, structures and waters so appropriated, and a copy of the deed or release of the lands, structures and waters so conveyed or ceded, together with the date of the recording of said deed or release in the office of the department of state.

Formerly Sec. 59-g, added L. 1917, c. 13; renumbered 59-h, L. 1917, c. 130; amended L. 1928, c. 380, Sec. 3, eff. March 16, 1928.

General Municipal Law, article 11, section--

Sec. 210. United States may acquire land in cities.--The United States is hereby authorized to acquire by condemnation, purchase or gift in conformity with the laws of this state, one or more pieces of land not exceeding two acres in extent, in any city or village of this state, for the purpose of erecting and maintaining thereon a public building for the accommodation of post offices and other governmental offices in any such city or village.

Sec. 211. Certified copy of transfer to be filed.--Whenever the United States, by any agent authorized under the hand and seal of any head of an executive department of the government of the United States, shall cause to be filed in the office of the secretary of state of this state, maps and descriptions by metes and bounds of any such pieces of land which had been acquired by the United States for the purposes specified in section two hundred and ten of this article, exclusive jurisdiction, except as provided in section two hundred and twelve, is thereupon ceded to the United States shall be or remain the owner thereof. Such maps shall be drawn with pen and India ink upon tracing cloth and shall be otherwise in form and manner suitable to the files, records and purposes of the office of the secretary of state, and show such data thereon, or in relation thereto, as may be required by the secretary of state. As amended L. 1939, c. 520; L. 1944, c. eff. April 9, 1944.

Sec. 212. Jurisdiction of state not affected.--The jurisdiction ceded to the United States as prescribed by this article shall not prevent the execution on the land acquired for the purposes specified in section two hundred and ten of any process civil or criminal, issued under the authority of the state, except as such process might affect the property of the United States thereon.

NORTH CAROLINA

The general Statutes of North Carolina (Recompiled 1950), chapter 104, article 1, sections--

Sec. 104-1. Acquisition of lands for specified purposes authorized; concurrent jurisdiction reserved.--The United States is authorized, by purchase or otherwise, to acquire title to any tract or parcel of land in the State of North Carolina, not exceeding twenty-five acres, for the purpose of erecting thereon any custom house, courthouse, post office, or other building, including lighthouses, lightkeeper's dwellings, lifesaving stations, buoys and coal depots and buildings connected therewith, or for the establishment of a fish-cultural station

and the erection thereon of such buildings and improvements as may be necessary for the successful operations of such fish-cultural station. The consent to acquisition by the United States is upon the express condition jurisdiction with the United States over such lands as that all civil and criminal process issued from the courts of the State of North Carolina may be executed thereon in like manner as if this

authority had not been given, and that the State of North Carolina also retains authority to punish all violations of its criminal laws committed on any such tract of land. (1970-1, c. 44, s. 5; Code, ss. 3080, 3083; 1887, c. 136; 1899, c. 10; Rev., s. 542; C. S., s. 8053.)

Sec. 104-2. Unused lands to revert to State.--The consent given in Sec. 104-1 is upon consideration of the United States building lighthouses, lighthouse-keepers' dwellings, lifesaving stations, buoys, coal depots, fish stations, post offices, custom houses, and other buildings connected therewith, on the tracts or parcels of land so purchased, or that may b purchased; and that the title to land so conveyed to the United States shall revert to the State unless the construction of the United States shall revert to the State unless the construction of the aforementioned buildings be completed thereon within ten years from the date of the conveyance from the grantor. (1080-1, c. 44, s. 5; Code, ss, 3080, 3083; 1887, c. 136; 1899, c. 10; Rev. s. 5426; C. S., s. 8054.)

Sec. 104-3. Exemption of such lands from taxation.--The lots, parcels, or tracts of land acquired under this chapter, together with the tenements and appurtenances for the purpose mentioned in this chapter, shall be exempt from taxation. (1870-1, c. 44, s. 3; Code, s. 3082; Rev., s. 5428; C.S., s. 8055.)

Sec. 104-6. Acquisition of lands for river and harbor improvement; reservation of right to serve process.--The consent of the legislature of the State is hereby given to the acquisition by the United States of any tracts, pieces, or parcels of land within the limits of the State, by purchase or condemnation, for use as sites for locks and dams, or for any other purpose in connection with the limits of the State, by purchase or condemnation, for use as sites for locks and dams, or for any other purpose in connection with the improvement of rivers and harbors within and on the borders of the State. The consent hereby given is in accordance with the seventeenth clause of the eighth section of the first article of the Constitution of the United States, and with the acts of Congress in such cases made and provided; and this State retains concurrent jurisdiction with the United States over any lands acquired and held in pursuance of the provisions of this section, so far as that all civil and criminal process issued under authority of any law of this State may be executed in any part of the premises so acquired, or the buildings or structures thereon erected. (1907, c. 681; C.S., s. 8058.)

Sec. 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.--The consent of the State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in the State required for the sites for custom houses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. The jurisdiction ceded shall not vest until the United States shall have acquired title to said lands by purchase, condemnation, or otherwise.

So long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State. (1907, c. 25; C.S., s. 8059.)

Sec. 104-8. Further authorization of acquisition of land.--The United States is hereby authorized to acquire lands by condemnation or otherwise in this State for the purpose of preserving the navigability of navigable streams and for holding and administering such lands for national park purposes: Provided, that this section and Sec. 104-9 shall in nowise affect the authority conferred upon the United States and reserved to the State in Secs. 104-5 and 104-6. (1925, c. 152, s. 1.)

Sec. 104-9. Condition of consent granted in preceding section.--This consent is given upon condition that the State of North Carolina shall retain a concurrent jurisdiction with the United States is and over such lands so far that civil process in all cases, and such criminal process as may issue under the authority of the State of North Carolina against any person charged with the commission of any crime, without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been given. (1925, c. 152, s. 2.)

Chapter 113, article 9, section--

Sec. 113-113. Legislative consent jurisdiction made a misdemeanor.--The consent of the General assembly of North Carolina is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and

non-game birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March first, one thousand nine hundred and eleven, entitle "An act to enable any state to co-operate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 U.S. Stat. at Large, p. 961), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this section shall be construed as conveying the ownership of wild life from the State of North Carolina or permit the trapping, hunting or transportation of any game animals, game or non-agency, department or instrumentality of the United States government or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any act of Congress, except in accordance with the provisions of article 7 of this subchapter.

Any person, firm or corporation, including employees or agents of any department or instrumentality of the United States government, violating the provisions of this section shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1915, c. 205; C.S. c. 2099; 1939, c. 79, Secs. 1, 2.)

NORTH DAKOTA

Constitution of North Dakota, article XVI, section--

Sec. 204. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten hereto fore declared by the president of the United States; provided, legal process, civil and criminal, of this state, shall extend over such reservation in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

North Dakota Revised Code of 1943, title 54, chapter 54-01, sections--

54-0106 Jurisdiction over property in State; limitations.--The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, or purchased or condemned by, the United States, is qualified by thee terms of such cession or the laws under which such purchase or condemnation has been or may be made.

54--107. Legislative consent to purchase of lands by United States; Jurisdiction.--The legislative assembly consents to the purchase or condemnation by the United States of any tract within this state for the purpose of erecting forts, magazines, arsenals, and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime, may be served and executed thereon in the same manner and by the same officers as if the purchase or condemnation had not been made.

54-0108. Jurisdiction ceded to lands acquired by United States for military post.--Jurisdiction is ceded to the United States over any tact of land that may be acquired by the United States on which to establish a military post. Legal process, civil and criminal, of this state, shall extend over all land acquired by the United States to establish a military post in any case in which exclusive jurisdiction is not vested in the United States, and in any case where the crime is not committed within the limits of such reservation.

OHIO

Baldwin's Ohio Revised Code, Annotated, 1953, chapter 159, section--

159.01 (13768). Acquisition of title to land by United States.--Whenever it is necessary for the United States to acquire title to a tract of land in this state for any purpose, and the state gives its consent to such acquisition, the United States may acquire such land by appropriation; and for such purpose the "Act prescribing the mode of assessment and collection of compensation to the owners of private property appropriated by and to the use of corporations," passed April 23, 1872, and all acts amendatory thereof, are hereby made applicable, and said United States may pay the cost, including such reasonable attorney fees as are allowed by the court, to the person whose property is sought to be appropriated, and refuse to make the appropriation, if in their judgment the compensation assessed is too great to justify the appropriation.

159.03 (13770). Consent of state given to acquisition by United States of land required for Government purposes.--The consent of the state is hereby given, in accordance with clause 17, Section 8,

Article I, United States Constitution, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this

state required for sites for custom houses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purposes of the government.

159.04 (13771). Exclusive jurisdiction over land ceded to the United States; exceptions.--Exclusive jurisdiction in and over any land acquired by the United States under section 159.03 of the Revised Code is hereby ceded to the United States, for all purposes except the service upon such sites of all civil and criminal process of the courts of this state. The Jurisdiction so ceded shall continue no longer than the said United States owns such lands.

159.05 (13772). Jurisdiction shall vest; voting.--The jurisdiction ceded under section 159.04 of the Revised Code shall not vest until the United States has acquired title to the lands by purchase, condemnation, or otherwise. As long as the lands remain the property of the United States they are exempt and exonerated from all state, county, and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this state. Sections 159.03 to 159.06, inclusive, of the Revised Code do not prevent any officers, employees, or inmates of any national asylum for disabled volunteer soldiers located on any such land over which jurisdiction is ceded, who are qualified voters of this state from exercising the right of suffrage at all township, county, and state elections in any township in which such national asylum is located.

Chapter 3503, section--

3503.03 (4785-32). Inmates of soldier's homes.--Infirm or disabled soldiers who are inmates of a national home for such soldiers, who are citizens of the United States and have resided in this state one year next preceding any election, and who are otherwise qualified as to age and residence within the county and township shall have their lawful residence in the county and township in which such home is located.

OKLAHOMA

Oklahoma Statutes Annotated, title 29, section--

Sec. 604. National Forest Lands--Rules and regulations of Federal Government.--The consent of the State of Oklahoma be and hereby is given to the making by Congress of the United States or under its authority, of all such rules and regulations as the Federal Government may determine to be needful in respect to game animals, game and nongame birds and fish on or in and over National Forest Lands within the State of Oklahoma. Laws 1951, p. 90, Sec. 604.

Title 80, sections--

Sec. 1. State's consent to acquisition of lands by United States.--The consent of the State of Oklahoma is hereby given, in accordance with

the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United

States, by purchase, condemnation or otherwise, of any land in this state required for sites for custom houses, post offices, arsenals, forts, magazines, dockyards, military reserves, forest reserves, game preserves, national parks, irrigation or drainage projects, or for needful public buildings or for any other purposes for the government. (R.L., 1910, Sec. 3190; Laws 1915, ch. 46, Sec. 1.)

Sec. 2. Jurisdiction ceded to United States over lands acquired.--Exclusive jurisdiction in and over any lands so acquired by the United States shall be, and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands. (R. L. 1910, Sec. 3191.)

Sec. 3. Vesting of jurisdiction--Exemption of lands from taxation.--The jurisdiction ceded shall not vest until the United States shall have acquired the title of said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States, when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county and municipal taxation, assessment, or other charges which may be levied or imposed under the authority of this State. (R. L. 1910, Sec. 3192.)

OREGON

Oregon Revised Statutes, 1953, chapter 272, sections--

272.020 Conveyance of site to United States for aid to navigation; jurisdiction.--Whenever the United States desires to acquire title to land belonging to the state, and covered by the navigable waters of the United States, within the limits hereof, for the site of lighthouse, beacon or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of such purposes, the Governor may convey the title to the United States, and cede to the United States jurisdiction over the same; provided, no single tract shall contain more than 10 acres. The State of Oregon shall retain concurrent jurisdiction, so far that all process, civil or criminal, issuing under the authority of the state, may be executed by the proper officers thereof upon any person amenable to the same within the limits of land so ceded, in like manner and to life effect as if this section had never been passed.

272.030 Acquisition of land for Federal buildings; jurisdiction.--Consent hereby is given to the United States to purchase or otherwise acquire any lands within the State of Oregon for the purpose of

erecting thereon any needful public buildings, under authority of any Act of Congress. The United States may enter upon and occupy any such lands which may be purchased or otherwise acquired, and shall have the right of exclusive jurisdiction over the same except that all process, civil or criminal, issuing under authority of the laws of the State of Oregon, may be executed by the proper officers thereof upon any person amenable to the same within the limits of the land so acquired, in like manner and to the same effect as if this section had not been passed.

PENNSYLVANIA

Purdon's Pennsylvania Statues Annotated (1953), title 74, section--

Sec. 1. Jurisdiction of state ceded to the United States, in certain cases.--The jurisdiction of this State is hereby ceded to the United States of America over all such pieces or parcels of land, not exceeding ten acres in anyone township, ward or city, or borough, within the limits of this State, as have been or shall hereafter be selected and acquired by the United States for the purpose of erecting post offices, custom houses or other structures, exclusively owned by the general government, and used for its purposes: Provided, That an accurate description and plan of such lands, so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the Department of Internal Affairs of this State, as soon as said United States shall have acquired possession of the same.

All such descriptions and plans heretofore filed with the Secretary of the Commonwealth shall, as soon as it may conveniently be done, be transferred to the Department of Internal Affairs, and the Department of Internal Affairs shall give to the Secretary of the Commonwealth proper receipts for such descriptions and plans.

The jurisdiction so ceded to the United States of America is granted upon the express condition that the Commonwealth of Pennsylvania shall retain concurrent jurisdiction,, with the United States in and over the lands and buildings aforesaid, in so far that civil process in al cases, and such criminal process as may issue under the authority of the Commonwealth of Pennsylvania against anyone charged with crime committed outside said land, may be executed thereon in the same manner as if this jurisdiction so long as the said land shall be used for the purposes for which jurisdiction is ceded and no longer.

The jurisdiction so ceded to the United States shall be upon the further condition that the Commonwealth reserves to itself and its

political subdivisions whatever power of taxation it may constitutionally reserve, to levy and collect all taxes now or hereafter imposed by the Commonwealth and its political subdivisions upon property, persons, and franchises within the boundaries so ceded. 1883, June 13, P. L. 118; Sec. 1; 1905, March 17, P.L. 45, Sec. 1; 1933, May 2, P.L. 223, Sec. 1945, April 17, P.L. 235, Sec. 1.

Sec. 11. Consent to acquisition of lands for dams, locks, etc., by the United States.--Whenever the United States shall make an appropriation, and shall be about to begin the improvement of any of the navigable waters within the state of Pennsylvania, by means of locks and permanent and moveable dam or dams with adjustable chutes, the consent of the state of Pennsylvania, through the governor thereof, is hereby given to the acquisition by the United States, by purchase, or by condemnation in the manner hereinafter provided, of any lands, buildings or other property, necessary for the purposes of erecting thereon dams, abutments, locks, lockhouses, chutes and other necessary structures for the construction and maintenance of slack water navigation on said rivers, and the United States shall have, hold, use and occupy the said land or lands, buildings, or other property, when purchased or acquired as provided by this act, and shall exercise jurisdiction and control over the same, concurrently with the state of Pennsylvania. 1887, May 18, P.L. 121, Sec. 1.

RHODE ISLAND

Rhode Island General Laws of 1938 (Annotated), title 1, chapter 1, section--

Sec. 2. The jurisdiction of the state shall extend to, and embrace, all places within the boundaries thereof, except as to those p;aces that have been ceded to the United States, or have been purchased by the United States with the consent of the state, Provided, however, with respect to all land, the jurisdiction over which shall have been ceded to the United States by the State of Rhode Island, the said State of Rhode Island shall have and hereby does retain concurrent jurisdiction with the United States of and over said land, for the sole and only purpose of serving and executing thereon civil and criminal process issuing by virtue of and under the laws and authority of the State of Rhode Island.

Sec. 4. The premises described in the preceding section shall be exempt from all taxes and assessments and other charges which may be levied or imposed under the authority of said state and shall so continue to be exempt as long as said property shall remain the property of the United States and no longer. (P.L.,1919, Ch. 1717.)

Title 1, chapter 2, section--

Sec. 1. The consent of the state of Rhode Island is given to the purchase by the government of the United States, or under the authority of the same, of any tract, piece, or parcel of land from any person within the limits of the state for the purpose of erecting thereon post-offices, lighthouses, beacon-lights, range-lights, life-saving stations, and lightkeepers' dwellings, and other needful public buildings or for the location, construction, or prosecution of forts, fortifications, coast defenses, and appurtenances thereto, or for the location and maintenance of any cable-lines, landing-places, terminal stations, and other needful buildings connected therewith for weather-bureau purposes, or for the establishment of navel stations or coal depots, or the section of buildings, piers, wharves, or other structures for naval uses, or for the establishment of fish or lobster cultural stations or hatcheries, or the erection or construction of other needful buildings connected therewith or for the erection or construction of piers, wharves, dams, or other structures for use in connection with said fish or lobster cultural stations or hatcheries; and all deeds, conveyances, or title papers for the same shall be recorded, as in other cases, upon the land records of the town in which the land so conveyed may lie; the consent herein given being in accordance with the 17th clause of the 8th section of the first article of the constitution of the United States and with the acts of congress in such cases made and provided. (P.L., 1926, Chap. 805, amending P. L., 1918, Chap. 1608.)

Sec. 2. The lots, parcels, or tracts of land so selected, together with the tenements and appurtenances for the purposes before mentioned, shall be held exempt from taxation by the State of Rhode Island.

Sec. 5. Whenever it shall be made to appear to the superior court, upon the application of any authorized agent of the United States, that said United States is desirous of purchasing any tract of land, and the right of way thereto, within the limits of this state, for the erection of a light-house, beacon-light, range-light, life-saving station, or lightkeeper's dwelling, or for the location, construction, or prosecution of forts, fortifications, coast defenses and appurtenances thereto, and that the owner of said land is unknown,

nonresident, or a minor, or from any other cause is incapable of making a perfect title to said lands, or in case the said owners, being residents and capable of conveying, shall, from disagreement in price, or from any other cause, refuse to convey said lands to the United States the said court shall order notice upon said application to be published in the newspaper published nearest the place where the land lies, also in a newspaper published in Newport, and in a newspaper published in Providence, once in each week for the space of 4 months, which notice shall contain

an accurate description of the said lands, together with the names of the owners, or supposed owners, and shall require all persons interested in said lands to appear on a day and at a place to be specified in said notice, and to make their objections, if any they have, to having the lands condemned to the United States for the use aforesaid. Whereupon, the said court shall proceed to empanel a jury, as in other cases, to appraise the value of said lands, as their fair market value, and all damages sustained by the owners thereof by the appropriation thereof by the United States for the purpose aforesaid; which award, when so assessed, with the entire courts of said proceedings, shall be paid into the general treasury of the state, and thereupon the sheriff of the county in which such land lies, upon the production of the v), of the general treasurer that the said amount has been paid, shall execute to the United States, and deliver to their authorized agent, a deed of the said lands, reciting the proceedings in said cause, which said deed shall convey to the United States a good and absolute title to the said lands for the purposes aforesaid, against all persons whatsoever.

Sec. 9. All civil and criminal u issued under the authority of this state or of any department, division or officer thereof may be served and executed on any lot, piece, parcel or tract of land acquired by the United States as aforesaid under the authority of this chapter, and in any buildings or structures that may be erected thereon, in the same manner as if jurisdiction had not been ceded as aforesaid. (P. L. 1935, Ch. 2199.)

SOUTH CAROLINA

Code of Laws of South Carolina, 1952, Annotated, title 28, chapter 1, article 3, section--

Sec. 28-40. Consent to Congress making rules and regulations.--The consent of the General Assembly is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the Federal government shall determine to be needful in respect to game animals, game birds, non-game birds and fish on such lands and waters in the State as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March 1, 1911, entitle "An Act to Enable any State to Cooperate with any other State or States, with the United States for the Protection of the Watersheds of Navigable Streams and to Appoint Commission for the Acquisition of Lands for the Purpose of Conserving the Navigability of Navigable Rivers" (36 United States Statutes at Large, page 961) and acts of Congress supplementary thereto and amendatory thereof. (Acts 1922, p. 106.)

Title 39, chapter 2, article 1, section--

Sec. 39-51. General consent to acquire lands.--The consent of this State is hereby given, in accordance with the seventeenth clause, eighth section, of the first article of the Constitution of the United States, to the acquisition by the United States by purchase, condemnation, or otherwise of any land in this State required for sites for custom houses, court houses, post offices, arsenals or other public buildings whatever or for any other purposes of the government.

1942 Code Sec. 2042; 1932 Code Sec. 2042; 1908 (25) 1127.

Sec. 39-52. Jurisdiction over such lands; service of process.--Exclusive jurisdiction in and over any land so acquired by the United States pursuant to the consent given by Sec. 39-51 shall be, and the same is hereby, ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State. The jurisdiction so ceded shall continue no longer than the United States shall own such lands.

1942 Code Sec. 2042; 1932 Code Sec. 2042; 1908 (25) 1127.

Sec. 39-53. Jurisdiction not to vest until title acquired.--The jurisdiction ceded in any case pursuant to Sec. 39-52 shall not vest until the United States shall have acquired the title to any such lands by purchase condemnation or otherwise.

1942 Code Sec. 2042; 1932 Code Sec. 2042; 1908 (25) 1127.

Sec. 39-54. Exemption from taxation.--So long as any land acquired by the United States pursuant to the consent given by Sec. 39-51 shall remain the property of the United States, and no longer, such lands shall be and continue exempt and exonerated from all State, county and municipal taxation, assessments or other charges which may be levied or imposed under the authority of this State.

1942 Code Sec. 2042; 1932 Code Sec. 2042; 1908 (25) 1127.

Sec. 39-61. Land purchased for arsenals and magazines.--In addition to the authority granted with respect to arsenals by article 1 of this chapter the United States or such person as may be by it authorized may purchase in any part of this State that may be thought most eligible the fee simple of any quantity of land, not exceeding two thousand acres, for the purpose of erecting arsenals and magazines thereon.

1942 Code Sec. 2043; 1932 Code Sec. 2043; Civ. C. '22 Sec. 5; Civ. C. '12 Sec. 5; Civ. C. '02 Sec. 4; G. S. 4; R. S. 4; 1795 (5) 260.

Sec. 39-62. Valuing lands if parties cannot agree. If the person whose land may be chosen for the above mentioned purpose should not be disposed to sell it or if the persons appointed to make the purchase should not be able to agrees upon terms with such owner of such land, it shall be valued, upon oath, by a majority of persons to be appointed by the court of common pleas of the county where such land is situated for that purpose and the land shall be vested in the Untied States upon the amount of such valuation to the owner of such land.

1942 Code Sec. 2044; 1932 Code Sec. 2044; Civ. C. '22 Sec. 6; Civ. C. '12 Sec. 6; Civ. C. '02 Sec. 5; R.S. 5; 1795 (5) 260.

Sec. 39-63. Concurrent jurisdiction retained by State over such lands.--Such land, when purchased, and every person and officer residing or employed thereon, whether in the service of the United States or not, shall be subject and liable to the government of this

State and the jurisdiction, laws and authority thereof. The United States shall exercise no more authority or power within the limits of such land than it might have done before acquiring it or than may be necessary for the building, repairing or internal government of the arsenals and magazines thereon to be erected and the regulation and the management thereof and of the officers and persons by them to be employed in or about the same.

1942 Code Sec. 2045; 1932 Code Sec. 2045; Civ. C. '22 Sec. 7; Civ. C. '12 Sec. 7; Civ. C. '02 Sec. 6; G. S. 6; 1795 (5) 260.

Sec. 39-64. Exemption from taxation.--Such lands shall forever be exempt from any taxes to be paid to this State.

1942 Code Sec. 2045; 1032 Code Sec. 2045; Civ. C. '22 Sec. 7; Civ. C. '12 Sec. 7; Civ. C. '12 Sec. 6; G. S. 6; 1795 (5) 260.

Chapter 2, article 3, sections--

Sec. 39-71. Power of Governor to convey or cede tracts.--Whenever the United States desires to acquire title to land belonging to the State and covered by the navigable waters of the United States, within the limits thereof, for the site of a lighthouse, beacon or other aid to navigation and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, the Governor may convey the title to the United States and cede to the United States jurisdiction over such land; provided, that no single tract so conveyed shall contain more than ten acres.

1942 Code Sec. 2047; 1932 Code Sec. 2047; Civ. C. '22 Sec. 9; Civ. C. '12 Sec. 9; Civ. C. '02 Sec. 8; G. S. 8; R. S. 8; 1874 (15) 790.

Sec. 39-72. Concurrent jurisdiction; service of process.--The State shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the State, may be executed by the proper officers thereof upon any person amenable to such process within the limits of land so ceded in like manner and to like effect as if this article had never been enacted.

1942 Code Sec. 2047; 1932 Code Sec. 2047; Civ. C. '22 Sec. 9; Civ. C. '12 Sec. 9; Civ. C. '02 Sec. 8; G. S. 8; R. S. 8; 1874 (15) 790.

Chapter 2, Article 4, Sections--

Sec. 39-81. Jurisdiction ceded.--The jurisdiction of the State is hereby ceded to the United States over so much land as is necessary for the public purposes of the United States; provided, that the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the lands by grant or deed from the owner thereof and the evidences thereof shall have been recorded in the office where, by law, the title to such land is recorded. The United States is to retain such jurisdiction so long as such lands shall be used for the purposes aforementioned and no longer.

1942 Code Sec. 2048; 1932 Code Sec. 2048; Civ. C. '22 Sec. 10; Civ. C. '12 Sec. 10; Civ. C. '02 Sec. 9; G. S. 9; R. S. 9; 1871 14 535.

Sec. 39-82. Retention of certain jurisdiction; service of process.--Such jurisdiction is granted upon the express condition that the State shall retain a concurrent jurisdiction with the United States in and over such lands, so far as that civil process in all cases not affecting the real or personal property of the United States and such criminal or other process as shall issue under the authority of the State against any person charged with crimes or misdemeanors committed within or without the limit of such lands may be executed therein in the same way and manner as if no jurisdiction had been hereby ceded.

1942 Code Sec. 2048; 1932 Code Sec. 2048; Civ. C. '22 Sec. 10 Civ.

P. '12 Sec. 10; Civ. C. '02 Sec. 9; G. S. 9; R. S. 9; 1871 (14) 535.

Sec. 39-83. Exemption from taxation.--All lands and tenements which may be granted to the United States pursuant to the provisions of Sec. 39-81 shall be and continue, so long as the same shall be used for the purposes in said section mentioned discharged from all taxes, assessments and other charges which may be imposed under the authority of the State.

1942 Code Sec. 2049; 1932 Code Sec. 2049; Civ. C. '22 Sec. 11; Civ. C. '12 Sec. 11; Civ. C. '02 Sec. 10; G. S. 10; 1871 (15) 536.

SOUTH DAKOTA

Constitution of South Dakota, article XXVI, section 18, paragraph--

FIFTH. That jurisdiction is ceded to the United States over the military reservations of Fort Meade, Fort Randall and Fort Sully, heretofore declared by the President of the United States: Provided legal process, civil and criminal, of this state shall extend over such reservations in all cases of which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

These ordinances shall be irrevocable without the consent of the United States, and also the people of the said state of South Dakota, expressed by their legislative assembly.

South Dakota Code of 1939, chapter 55.01, section--

55.0101 Sovereignty and jurisdiction: extent and limitations.--The sovereignty and jurisdiction of this state extends to all territory within its established boundaries except as to such places wherein jurisdiction is expressly ceded to the United States by the state Constitution, or wherein jurisdiction has been heretofore or may be hereafter ceded to the United States, with the consent of the people of this state, expressed by their Legislature and the consent of the United States.

55.0102 United States government: jurisdiction; authority to acquire land; purchase or condemnation; concurrent rights, service of process state and federal government.--The people of this state by their Legislature consent to the purchase or condemnation, by the United States, in the manner prescribed by law, of any tract of land within this state owned by any natural person or private corporation, required by the United States for any public building, public work, or other public purpose; provided that in the case of public buildings such tract shall not exceed ten acres in extent.

Jurisdiction is ceded to the United States over any tract of land acquired under the provisions of this section to continue only so long as the United States shall own and occupy such tract. During which time the same shall be exempt from all taxes, assessments, and other charges levied or imposed under authority of the state.

The consent and jurisdiction mentioned in this section are given and ceded upon the express condition that all civil and criminal process, issued from the court of this state, may be served and executed in and upon any tract of land so acquired by the United States, in the same manner and by the same officers as if such purchase or condemnation had not been made, except in so far as such process may affect the real or personal property of the United States.

55.0107 General cession of jurisdiction to United States: property acquired by donation or otherwise for public purposes; acquired grants confirmed; concurrent jurisdiction for service of process retained.--Jurisdiction of the lands and their appurtenances which have been or may be acquired by the United States through donations from this state or other states or private persons or which may have been acquired by exchange, purchase, or condemnation by the United States for use of the National Sanitarium in Fall River county; Fish Lake in Aurora county; Wind Cave National Park: the Bad Lands National Monument or Park, and for other public purposes of the United States is hereby ceded to the United States and all such prior grants or donations of this state are hereby confirmed; provided however, that all civil or criminal process, issued under the authority of this state or any officer thereof, may be executed on such lands and in the buildings which may be located thereon in the same manner as if jurisdiction had not been ceded.

TENNESSEE

Williams Tennessee Code, Annotated, 1934,, part I, title 2, chapter 1, article II, section--

96-82 (70). Sovereignty is coextensive with boundary.--The sovereignty and jurisdiction of the state is coextensive with the boundaries thereof, but the extent of such jurisdiction over places that have been or may be ceded to the United States is qualified by the terms of such cession.

98-99. [Repealed.]

COMPLIER'S NOTE.--Section 1, Acts 1943, ch. 10, repealed these sections, the same being the general acts of cession.

Section 2, Acts 1943, ch. 10, provides: "As to any lands heretofore acquired by the United States Government, the map or plans of which and description by metes and bounds has not been filed in the county court clerk's office of the county in which the same was situated, by the date of the passage of this act, the same shall not be permitted to be filed. It is the purpose of this act to terminate definitely on the date of its passage any further or additional cession of jurisdiction of property to the United States under the provisions of Code sections 98 and 99. Jurisdiction over property in respect to which Code sections 98 and 99 have not been fully complied with shall not be treated or deemed as ceded and it is specifically provided that section 12 of the Code, or any similar section, shall have no application to the provisions and requirements of this act."

Emergency Clause.--Section 3, Acts 1943, ch. 10 declared an emergency.

Part I, title 3, chapter 7A, article V, section--

1012.33. Acknowledgments, affidavits, etc., of members of the armed forces taken before commissioned officers thereof.--As use in this act the term "armed forces" shall include all persons serving in the army, navy and marine corps of the United States.

2. In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise provided by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and

affidavits executed, and affirmations administered, depositions and affidavits executed, and other notarial acts performed in connection with any pleading or other instrument to be filed or used in any court in this state, before or by any commissioned officer in active service of the armed forces of the United States, with the rank of ensign or higher, in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States.

3. Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts as aforesaid, heretofore or hereafter made or taken, are hereby declared legal, valid and binding, and instruments and documents so acknowledged,, authenticated, or sworn to, shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect, as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit or other notarial act as aforesaid, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law. Provided the validation of such instruments shall apply only to those executed since the first day of November, 1940.

4. In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act, or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank and branch of service or subdivision thereof of any such commissioned officer appear upon such instrument or

document, or certificate, no further proof of the authority of such officer so to act shall be required, and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this act. (1945, ch. 5, secs. 1-4.)

Part I, Title 5, Chapter 1, Article IV, Section--

1085 689 (542). Exemptions enumerated.--The property herein enumerated shall be exempt from taxation:

(1) Public property.--All property of the United States, all property of the State of Tennessee, or any county, or of any incorporated city, town, or taxing district in the state that is used exclusively for public, county or municipal purposes. (1907, ch. 602, sec. 2.)

Part III, title 2, Chapter 15A, Section--

9572.18. Who may petition for adoption and change of name; joinder of spouse.--(1) Any person over twenty-one years of age may petition the chancery court to adopt a minor child and may pray for a change of the name of such child. If the petitioner has a husband or wife living, competent to join in the petition, such spouse shall join in the petition.

(2) Provided, however, that if the spouse of the petitioner is a natural parent of the child to be adopted, such spouse need not join in the petition but need only to give consent as provided herein.

(3) Provided further, that the petitioner or petitioners shall have resided in Tennessee, or on federal territory within the boundaries of

Tennessee for one year next preceding the filing of the petition. (1951, ch. 202, sec. 4.)

Public Statutes of the State of Tennessee, 1858-71--

Cemeteries

1866-7.--Chapter XLLIV

Whereas, In the late bloody sacrifice to restore and maintain to the people of Tennessee the imperiled free institutions of our fathers, more than fifty-five thousand of our fallen patriots were buried in our State, and the government of our common Union has provided appropriate cemeteries for the remains of these victims of rebellion, and requires that these cemeteries be held sacred under the protection of the nation; therefore,

* * *

SEC. 2. That the exclusive jurisdiction over all tracts and parcels of land, with the buildings and appurtenance belonging to the same,

including the quarters for officers, keepers, guards, or soldiers in charge of the same and the premises connected therewith, now, or at any time hereafter purchased, used or occupied by the United States, their officers or agents, for cemeteries or burial places, within the limits of this State, is hereby ceded to the United States; and whenever such premises shall be no longer required, used, or occupied by the United States, the jurisdiction of such abandoned property may revert to the State of Tennessee.

SEC. 3. The property over which jurisdiction is ceded herein, shall be held exonerated and free from any taxation or assessment under the authority of this State, or of any municipality therein, until the jurisdiction shall have reverted; ;and the title and possession to said cemeteries, grounds, buildings, and appurtenances, shall be protected to the United States; and no process of any court shall be permitted against the same, or to dispossess the officers or agents of the United States thereof, without restricting any just claim for damages or value in the forum or mode provided by the United States for prosecuting the same.

SEC. 4. That any malicious, willful, reckless, or voluntary injury to, or mutilation of the graves, monuments, fences, shrubbery, ornaments, walks, or buildings of any of said cemeteries, or burial places, or appurtenances, shall subject the offender or offenders, each, to a fine of not less than twenty dollars; to which may be added, for an aggravated offense, imprisonment, not exceeding six months, in the county jail or workhouse, to be prosecuted before any court of competent jurisdiction.

TEXAS

Vernon's Annotated Constitution of the State of Texas, article 16, section--

SEC. 34. The Legislature shall pass laws authorizing the Governor to lease, or sell to the Government of the United States, a sufficient quantity of the public domain of the State necessary for the erection of forts, barracks, arsenals, and military stations, or camps, and for

other needful military purposes; and the action of the Governor therein shall be subject to the approval of the Legislature.

Vernon's Annotated Revised Civil Statutes of the State of Texas (revision of 1955), title 85--

ART. 5242. 5252 Authorized uses.--The United States Government through its proper agent, may purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as it deems expedient and may seek to occupy and hold as sites on which to erect and

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maintain lighthouses, forts, military stations, magazines, arsenals, dock yards, customhouses, post offices and all other needful public buildings, and for the purpose of erecting and constructing locks and dams, for the straightening of streams by making cutoffs, building levees, or for the erection of any other structures, or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas and the consent of the Legislature is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law. Acts 1905, p. 101.

ART. 5244. 5271 Immediate occupancy.--Upon the filing of the award of the commissioners with the county judge, if the United States Government shall deposit the amount of the award of the commissioners, together with all costs adjudged against the United States, they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court. Id.

ART. 5244A. Municipal corporations and political subdivisions or districts; conveyances to United States in aid of navigation, flood control, etc.; prior conveyances validated.--SECTION 1. When any County one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any County of such described class, and when any City, Town, Independent School District, Common School District, Water Improvement District, Water Control and Improvement District, Navigation District, Road District, Levee District, Drainage District, or any other municipal corporation, political subdivision or District organized and existing under the Constitution and laws of this State, which may be located within any County of such described class, may be the owner of any property, land, or interest in land desired by the United States of America to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 3242 of the 1925 Revised Statutes of Texas, any such County, City, Town, or other municipal corporation, political subdivision, or District of this State is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title or

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easement to any part of such property, land, or interest in land, which may be necessary for the construction, operation, and maintenance of such works, to convey the same with or without monetary consideration therefor to the United States of America, or to any other of the political subdivisions herein enumerated which by

resolution of its governing body may have heretofore agreed or may thereafter agree to acquire and convey the same, for ultimate conveyance to the United States of America and all such conveyances heretofore made are hereby ratified and confirmed. Provided that nothing in this Act is intended, nor shall this Act cede any of the rights of the Arroyo-Colorado Navigation District of Cameron and Willacy Counties, which District was formed in 1927 under the Acts of the Thirty-ninth Legislature, from dredging, widening, straightening, or otherwise improving the Arroyo-Colorado and all other lakes, bays, streams or bodies of water within said Navigation District or adjacent or appurtenant thereto, as a Navigation Project or the construction of turning basins, yacht basins, port facilities, reserving to said District all rights conferred by law in developing said Navigation Project and all improvements incident, necessary or convenient thereto.

SEC. 2. If any section, word, phrase, or clause in this Act be declared unconstitutional for any reason, the remainder of this Act shall not be affected thereby. Acts 1937, 45th Leg., p. 145, ch. 77.

ART. 5244A-2. Commissioners' Courts Authorized to convey land to United States for flood control near Mexican boundary.--SECTION 1. The Commissioners' Court of any county one or more of the boundaries of which is coincident with any part of the International Boundary between the United States and Mexico, or any county contiguous to any such county,which may have entered into an agreement with the United States of America to acquire and upon request convey to the United States, with or without monetary consideration, land or interest in land desired by the United States to enable any department or establishment thereof to carry out the provisions of any Act of Congress in aid of navigation, irrigation, flood control, or improvement of water courses, and in order to accomplish the purposes specified in Article 5242 of the 1925 Revised Statutes of Texas, is hereby authorized and empowered, upon request by the United States through its proper officers for conveyance of title to land or interest in land, which may be necessary for the construction, operation,and maintenance of such works, to secure by gift, purchase of by condemnation, for ultimate conveyance to the United States, the land or interest in land described in such request from the United States, and to pay for

the same out of any special flood-control funds or any available county funds. Provided, that in the event of condemnation by the county the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271 inclusive, Revised Civil Statutes of Texas of 1925, and Acts amendatory thereof, and supplementary thereto; Provided, further, that at any time after the award of the Special Commissioners the county may file a declaration of taking signed by the County Judge,after proper resolution by the Commissioners' Court, declaring that the lands, or interest therein, described in the original petition are thereby taken for a public purpose and for ultimate conveyance to the United States. Said declaration shall contain and have annexed thereto--

(1) A description of the land taken sufficient for the identification thereof.

(2) A statement of the estate or interest in said land taken, and the public use to be made thereof.

(3) A plan showing the lands taken.

(4) A statement of the amount of damage awarded by the Special

Commissioners, or, by the jury on appeal for the taking, of said land.

SEC. 2. Upon the filing of said declaration of taking with the County Clerk and the deposit of the amount of the award in money with the County Clerk, subject to the order of the defendant, and the payment of the costs, if any, awarded against the county, title in fee simple, or such less estate or interest therein specified in said declaration, shall immediately vest in the county, and said land shall by deemed to be condemned and taken for the uses specified, and may be forthwith conveyed to the United States and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said eminent domain proceeding and established by judgment therein against the county filing the said declaration; provided, further, that no appeal from such award nor service of process by publication shall have the effect of suspending the vesting of title in said county and the only issue shall by the question as to the amount of damages due to the owner from said county for the appropriation of said lands or interest therein for such public purpose. Acts 1939, 46th Leg., p. 482.

ART. 5245. 5273, 372, 331. State land.--When this State may be the owner of any land desired by the United States for any purpose specified in this title, the Governor may sell such land to the United States, and upon payment of the purchase money therefor into the Treasury, the Land Commissioner, upon the order of the Governor, shall issue a patent to the United States for such land in like manner

as other patents are issued. Acts 1854, p. 192; P.D. 5450; G. L. vol. 3, p. 1546.

ART. 5246. 5274, 373, 332. To record title.--All deeds of conveyances, decrees, patents, or other instruments vesting title in lands within this State in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situate, or in the county to which such county may be attached for judicial purposes and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice. Acts 1871, p. 19; P. D. 7693, G. L. Vol. 6, p. 921.

ART. 5247. 5275-6. Federal jurisdiction.--Whenever the United States shall acquire any lands under this title and shall desire to acquire constitutional jurisdiction over such lands for any purpose authorized herein, it shall be lawful for the Governor, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto, and accurate description by metes and bounds of the lands sought to be ceded. No such cession shall ever be made except upon the express condition that this State shall retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no such cession had taken place; and such condition shall be inserted in such instrument of cession. Acts 1849, p.12; G.L. vol. 3, p. 450.

ART. 5248. 5277, 376, 335. Exempt from taxation.--The United

States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise; provided, however, that any personal property located on said lands which is privately owned by any person, firm, association of persons or corporation shall be subject to taxation by this State and its political subdivisions; and provided, further, that

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any portion of said lands and improvements which is used and occupied by any person, firm, association of persons or corporation in its private capacity, or which is being used or occupied in the conduct of any private business or enterprise, shall be subject to taxation by this State and its political subdivisions. As amended Acts 1950, 51st Leg., 1st C. S., p. 105, ch. 37, Sec. 1.

Emergency. Effective March 17, 1950.

ART. 5248c. Counties authorized to convey lands to the United States.--SECTION 1. That any county having title to a plot of ground used for public purposes which is of area in excess of the needs of the county for its public purposes may sell, at private sale, for any fair consideration, and approved by its Commissioners Court, such excess area or any part thereof to the United States of America under the provisions of the Statutes of the United States of America authorizing the acquisition of sites for public buildings. The Commissioners Court of any county is hereby invested with full power to determine whether such excess of area exists, and the extent to which such excess may be sold and conveyed for any such purpose.

SEC. 2. All conveyances to the United States of America under the provisions of this Act must be authorized by the Commissioners Court of the county by an order entered upon its minutes in which it shall describe the portion of such plot of public ground to be conveyed, the consideration to be paid and shall direct that the County Judge of such county execute in the name of the county by him as County Judge a conveyance to the United States of America and make due delivery thereof upon payment of such consideration to its proper officer, which conveyance shall be in such form and contain such covenants and warranties as may be in such form and contain such covenants and warranties as may be prescribed by said Commissioners Court.

SEC. 3. That all proceedings and orders heretofore had and made by the Commissioners Court of any county undertaking to sell and provided for the conveyance of a part or part of any plot of ground such as is described in Section 1 hereof to the United States of America, pursuant to any advertisement by its officers inviting proposals to sell site for any public building be and the same are hereby validated, and legalized, as well as any deed executed and delivered or hereafter executed and delivered carrying out any such sale.

SEC. 3a. Provided, however, said Commissioners Court shall incorporate in any deed of conveyance to the United States of America a provision reserving concurrent jurisdiction over said lands for the 46th Leg., p. 138.

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Utah Code Annotated 1953, title 20, chapter 2, section 14,

subsection--

(11) Any person living upon any Indian or military reservation shall not be deemed a resident of Utah within the meaning of this chapter, unless such person had acquired, a residence in some county in Utah prior to taking up his residence upon such Indian or military reservation.

Title 63, chapter 8, sections--

63-8-1. Jurisdiction over land acquired or leased by United States--Reservations by state--Duration of jurisdiction.--Jurisdiction is hereby ceded to the United States in, to and over any and all lands or territory within this state which lave been or may be hereafter acquired by the United States by purchase, condemnation or otherwise for military or naval purposes and for forts, magazines, arsenals, dockyards and other needful buildings of every kind whatever authorized by Act of Congress, and in, to and over any and all lands or territory within this state now or hereafter held by the United States under lease, use permit, or reserved from the public domain for any of the purposes aforesaid; this state, however, reserving the right to execute its process, both criminal and civil within such territory. The jurisdiction so ceded shall continue so long as the United States shall own, hold or reserve land for any of the aforesaid purposes, or in connection therewith, and no longer.

63-8-2. Governor to execute conveyances.--The governor is hereby authorized and empowered to execute all proper conveyances in the cession herein granted, upon request of the United States or the proper officers thereof, whenever any land shall have been acquired, leased, used, or reserved from the public domain for such purposes.

63-8-4. Concurrent jurisdiction with United States.--The state of Utah retains concurrent jurisdiction, both civil and criminal, with the United States over all lands affected by this act.

VERMONT

The Vermont Statutes, Revision of 1947, title 3, chapter 4, sections--

60. Concurrent jurisdiction reserved.--When, pursuant to article one, section eight, clause seventeen of the Constitution of the United States, consent to purpose is given and exclusive jurisdiction ceded to the United States in respect to and over any lands within this state which shall be acquired by the United States for the purposes described in such clause of the Constitution, such jurisdiction shall

continue so long as the lands are held and occupied by the United States for public purposes; but concurrent jurisdiction is reserved for the execution upon such lands of all process, civil or criminal, issued by the courts of the state and not incompatible with the cession. The deed or other conveyance of such land to the United States shall contain a description of such lands by metes and bounds and shall be recorded in the town clerk's office of the town in which such lands lie or an accurate map or plan and description by metes and bounds of such lands shall be filed in such clerk's office.

P. L. Sec. 51. G. L. Sec. 40. 1917, No. 254, Sec. 44. 1910, No. 1, Sec. 2. P. S. Sec. 38. V. S. Sec. 2207. 1891, 15, Sec. 1.

61. Consent to purchase.--Subject to the provisions of section 60, consent to purchase is hereby given and exclusive jurisdiction is

ceded to the United States in respect to and over so much land as the United States has or may acquire for the purposes described in article one, section eight, clause seventeen of the Constitution of the United States. However, with respect to land hereafter sought to be acquired by the United States for flood control purposes or for other needful buildings as specified in such clause of the Constitution of the United States, the consent of the state shall not be deemed to have been given unless and until such land has been acquired by the state and conveyed to the United States in the manner provided by chapter 241 with respect to public works projects and with the written approval of the governor.

1939, No. 2, Sec. 1. P. L. Sec. 52. G. L. Sec. 41. 1917, No. 254, Sec. 45. 1910, No. 1, Sec. 1.2.

VIRGINIA

Code of Virginia, 1950, Annotated, title 7, chapter 3, sections--

Sec. 7-17. Lands acquired for various purposes.--The United States, having by consent of the General Assembly purchased, leased, or obtained jurisdiction over various parcels of land in this State for the erection of forts, magazines, arsenals, dockyards and other needful buildings, for national cemeteries, for conservation of forests and natural resources, and for various other purposes, and the transfers of the property and jurisdiction authorized by the several acts of the Assembly under which the cessions were made being subject to certain terms and conditions therein expressed, and under certain restrictions, limitations and provisions therein set forth, it is hereby declared that this State retains concurrent jurisdiction with the United States over the said aces, so far as it lawfully can, consistently with the acts of Assembly before-mentioned, and its courts, magistrates and officers may take such cognizance, execute such process, and discharge such

other legal functions within and upon the same as may not be incompatible with the true intent and meaning of such acts of Assembly. (Code 1919, Sec. 17.)

Sec. 7-18. Sites for lighthouses or other aids to navigation.--Whenever the United States desires to acquire title to, or to lease land, whether under water or not, belonging to the State for the site of a lighthouse, beacon, life-saving station, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for any of the purposes aforesaid, the Governor of the State shall have authority to convey or to lease, as the case may be, the site to the United States, provided, that no single parcel shall contain more than ten acres. And it is hereby declared that the title to the land so conveyed or leased to the United States, and the possession thereof, shall revert to the State, unless the construction of a lighthouse, beacon, life-saving station, or other aid to navigation be begun within two years after such conveyance or lease is made, and be completed within ten years thereafter; or, if completed, the use of the site for the purpose for which it is granted or leased by discontinued for five years consecutively after such construction is completed.

It is expressly provided, however, that, in case of any such lease or conveyance of any such property, there is hereby reserved in the Commonwealth of Virginia, over all lands therein embraced, the

jurisdiction and power to levy a tax on oil, gasoline and all other motor fuels and lubricants thereon owned by others than the United States and a tax on the sale thereof, on such lands, except sales to the United States for use in the exercise of essentially governmental functions. There is further expressly reserved in the Commonwealth the jurisdiction and power to serve criminal and civil process on such lands and to license and regulate, or to prohibit, the sale of intoxicating liquors on any such lands sand to tax all property, including buildings erected thereon, not belonging to the United States and to require licenses and impose license taxes upon any business or businesses conducted thereon. For all purposes of taxation and of the jurisdiction of the courts of Virginia over persons, transactions, matters and property on such lands, the lands shall be deemed to be a part of the county or city in which they are situated. Any such conveyance or lease as herein provided for shall be deemed to have been made upon the express condition that the relations of power and limitations hereinabove provided for are recognized as valid by the United States , and, in the event the United States shall deny the validity of the same as to all or any part of such lands, then, and in that event, the title and possession of all or any such part of such lands shall immediately revert to the Commonwealth. Over all lands leased or conveyed to the United States by the Governor pursuant to the

authority herein conferred, the Commonwealth hereby cedes to the United States the power and jurisdiction to protect such lands and all property of the United States thereon from damage, depredation or destruction, to regulate traffic on the highways thereon and all necessary jurisdiction and power to operate and administer such lands and property thereon for the purposes for which the same may be conveyed to the United States. but the jurisdiction and power hereby ceded to the United States shall not be construed as being in any respect inconsistent with or as in any way impairing the jurisdiction and powers hereinabove specifically reserved to the Commonwealth. (Code 1919, Sec. 18; 1936, p. 609.)

Sec. 7-19. Sites for customs houses, courthouses, arsenals, forts, naval bases, etc.--The conditional consent of the Commonwealth of Virginia is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any lands in Virginia, whether under water or not, from any individual, firm, association or body corporate, for sites for customs houses, courthouses, arsenals, forts, naval bases, military or naval purpose. The conditions upon which this consent is given are as follows:

That there is hereby reserved in the Commonwealth, over all lands so acquired by the United States for the purposes aforesaid, the jurisdiction and power to levy a tax on oil, gasoline and all other motor fuels and lubricants thereon owned by others than the United States and a tax on the sale thereof, on such lands, except sales to the United States for use in the exercise of essentially governmental functions. There is further expressly reserved in the Commonwealth the jurisdiction and power to serve criminal and civil process on such lands and to license and to prohibit, the sale of intoxicating liquors on any such lands and to tax all property, including buildings erected thereon, not belonging to the United States and to require licenses and impose license taxes upon any business or businesses conducted thereon. For all purposes of taxation and of the jurisdiction of the

courts of ,D over persons, transactions, matters and property on such lands, the lands shall be deemed to be a part of the county or city in which they are situated. Any such acquisition by or conveyance or lease to the United States, as is herein provided for, shall be deemed to have been secured or made upon the express condition that the reservations of power and limitations hereinabove provided for are recognized as valid by the United States, and, in the event the United States shall deny the validity of the same, as to all or any part of such lands, then and in that event, the title and possession of all or any such part of such lands conveyed to the United States by the Commonwealth shall im-

mediately revert to the Commonwealth. Over all lands acquired by or leased or conveyed to the United States pursuant to the conditional consent herein conferred, the Commonwealth hereby cedes to the United States concurrent jurisdiction, legislative, executive and judicial, with respect to the commission of crimes and the arrest, trial and punishment therefor, and also cedes to the United States the power and jurisdiction to protect such lands and all property of the United States thereon from damage, depredation or destruction, to regulate traffic on the highways thereon and all necessary jurisdiction and power to operate and administer such lands and property thereon for the purposes for which the same may be conveyed to the United States, but the jurisdiction and power hereby ceded to the United States shall not be construed as being inn any respect inconsistent with or as in any way impairing the jurisdiction and powers hereinabove specifically reserved to the Commonwealth. The jurisdiction and powers hereby ceded shall not apply to lands acquired for the purposes enumerated in Sec. 7-21. Whenever the United States shall cease to use any of such lands so acquired for any one or more of the purposes hereinabove set forth, the jurisdiction and powers herein ceded shall as to the same cease and determine, and shall revert to the Commonwealth.

Sec. 7-20. Sites for post offices, etc.--The unconditional consent of the Commonwealth of Virginia is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any lands in Virginia, from any individual, firm, association or body corporate, for sites for post offices, or for services incidental to postal work; provided, however, there is hereby expressly reserved in the Commonwealth the jurisdiction and power to serve criminal and civil process on such lands.

Whenever the United States shall cease to use any of such lands so acquired for any one or more of the purposes hereinabove set forth, the jurisdiction and powers herein ceded shall as to the same cease and determine, and shall revert to the Commonwealth. (1940, p. 749; Michie Code 1942, Sec. 19f.)

Sec. 7-21. Soldiers' homes, conservation, improvement of rivers, harbors, etc.--The conditional consent of Commonwealth of Virginia is hereby given to the acquisition by the United States, or under its authority, by purchase or lease, or in cases where it is appropriate that the United States exercise the power of eminent domain, then by condemnation, of any lands in Virginia from any individual, firm, association or private corporation, for soldiers' homes, for the con-

servation of the forests or natural resources, for the retirement from cultivation and utilization for other appropriate use of sub-marginal agricultural lands, for the improvement of rivers and harbors in or adjacent to the navigable waters of the United States, for public parks and for any other proper purpose of the government of the United States not embraced in Sec. 7-19.

Over all lands heretofore or hereafter acquired by the United States for the purposes mentioned in this section, the Commonwealth hereby cedes to the United States the power and jurisdiction to regulate traffic over all highways maintained by the United States thereon, to protect the lands and all property thereon belonging to the United States from damage, depredation or destruction and to operate and administer the lands and property thereon for the purposes for which the same shall be acquired by the United States. The Commonwealth hereby reserves to herself all other powers and expressly and specifically reserves the jurisdiction and power to levy a tax on oil, gasoline and all other motor fuels and lubricants, on such lands, not belonging to the United States, and a tax on the sale thereof on any part of any lands acquired by the United States for the purpose embraced in this section. The Commonwealth hereby further reserves expressly and specifically the jurisdiction and power to tax, license and regulate, or to prohibit, the sale of intoxicating liquors on any such lands so acquired; to tax all property, including buildings erected thereon, not belonging to the United States; to require licenses and impose license taxes upon any business or businesses conducted thereon. For all purposes of taxation and of the jurisdiction of the courts of Virginia over persons, transactions, matters and property on such lands, the lands shall be deemed to be a part of the county or city in which they are situated. The above powers enumerated as expressly and specifically reserved to the Commonwealth shall not be construed as being in any respect inconsistent with or impaired by the powers herein ceded to the United States.

The Commonwealth hereby further reserves unto herself over all such lands exclusive governmental; judicial, executive and legislative powers, and jurisdiction in all civil and criminal matters, except in so far as the same may be in conflict with the jurisdiction and powers herein ceded to the United States. (1936, p. 611; Michie Code 1942, Sec. 19c.

Sec. 7-23. Waste, unappropriated and marsh lands.--(1) Waste and unappropriated lands.--The Governor is authorized to execute in the name of the Commonwealth deeds conveying, subject to the jurisdictional and other limitations and reservations contained in Secs. 7-21 and 7-25, to the United States such title as the Commonwealth may have

in waste and unappropriated lands entirely surrounded by lands owned by the United States, when the same are certified as being vacant and unappropriated by a duly authorized agent of the United States and are described by metes and bounds descriptions filed with the Secretary of the Commonwealth and with the clerk of the court in the county wherein such unappropriated land is situated.

(2) Marsh lands in certain counties.--The Governor is authorized to execute, in the name and on behalf of the Commonwealth, a deed or other appropriate instrument conveying to the United States of America, without any consideration but subject to the jurisdictional

limitations and reservations contained in Secs. 7-21 and 7-25, such right, title and interest in or easement over and across the marshes lying along the sea side of the counties of Accomack and Northampton as may be necessary and proper for the construction, operation and maintenance of a canal or channel for small boats over and through such marsh lands. (1946, pp. 651)

Sec. 7-24. Ceding additional jurisdiction to the United States.--(1) In addition to the jurisdiction and powers over certain lands ceded to the United States by Secs. 7-18, 7-19 and 7-21, there is hereby ceded to the United States concurrent jurisdiction over crimes and offenses committed on lands acquired since March twenty-eighth, nineteen hundred and thirty-six, and hereafter acquired by the United States in Virginia by purchase, lease, condemnation or otherwise, for sites for customs houses, courthouses, arsenals, forts, naval bases, military or naval airports, or airplane landing fields, veterans hospitals, or for any military or naval purpose, and there is hereby ceded to the United States such additional jurisdiction and powers over lands acquired by the United States in Virginia by purchase or condemnation as hereinafter provided.

(2) Whenever the head or other authorized officer of any department or independent establishment or agency of the United States shall deem it desirable that such additional jurisdiction or powers be ceded over any lands in Virginia acquired or proposed to be acquired by the United States under his immediate jurisdiction, custody or control, and whenever the Governor and Attorney General of Virginia shall agree to the same, the Governor and Attorney General of Virginia shall agree to the same, the Governor and Attorney General shall execute and acknowledge a deed in the name of and under the lesser seal of the Commonwealth ceding such additional jurisdiction. The deed shall accurately and specifically describe the area and location of the land over which the additional jurisdiction and powers are ceded and shall set out specifically what additional jurisdiction and powers are ceded, and may set out any reservations in the Con-

monwealth of jurisdiction which may be deemed proper in addition to those referred to in subsection (6) hereof.

(3) In the event that the United States does not desire to accept all or any part of the jurisdiction and powers ceded by Secs. 7-18, 7-19 and 7-21 the deed shall set out specifically the jurisdiction and powers which it is desired not to accept.

(4) No such deed shall become effective or operative until the jurisdiction therein provided for is accepted on behalf of the United States as required by section three hundred and fifty-five of the Revised Statutes of the United States. The head or other authorized officer of a department or independent establishment or agency of the United States shall indicate such acceptance by executing and acknowledging such deed and admitting it to record in the office of the clerk of the court in which deeds conveying the lands affected would properly be recorded.

(5) When such deed has been executed and acknowledged on behalf of the Commonwealth and the United States, and admitted to record as hereinbefore set forth,it shall have the effect of ceding to and vesting in the United States the jurisdiction and powers therein provided for and none other.

(6) Every such deed as is provided for in this section shall reserve in the commonwealth over all lands therein referred to the jurisdiction and power to serve civil and criminal process on such

lands and in the event that the lands or any part thereof shall be sold or leased to any private individual, or any association or corporation, under the terms of which sale or lease the vendee or lessee shall have the right to conduct thereon any private industry or business, then the jurisdiction ceded to the United States over any such lands so sold or leased shall cease and determine, and thereafter the Commonwealth shall have all jurisdiction and power she would have had if no jurisdiction or power had been ceded to the United States for purposes of national defense. It is further provided that the reservations provided for in this subsection shall remain effective even though they should be omitted from any deed executed pursuant to this section.

(7) Nothing contained in this section shall be construed as repealing any special acts ceded jurisdiction to the United States to acquire any specific tract of land. (1940, p. 761; Michie Code 1942, Sec. 19e.)

Sec. 7-25. Reversion to Commonwealth; recorded title prerequisite to vesting of jurisdiction.--If the United States shall cease to be the owner of any lands, or any part thereof, granted or conveyed to it by the Commonwealth, or if the purposes of any such grant or conveyance

of the United States shall cease, or if the United States shall for five consecutive years fail to use any such land for the purpose of the grant or conveyance, then, and in that event, the right and title to such land or such part thereof, shall immediately revert to the Commonwealth.

All deeds, conveyances or title papers for the transfer of title of lands to the United States shall be recorded in the county or corporation wherein the land or the greater part thereof lies, but no tax shall be required on any such instrument made to the United States by which they acquire lands for public purposes.

The jurisdiction ceded by Secs. 7-18, 7-19 and 7-21, shall not vest until the United States shall have acquired the title of record to such lands, or rights or interest therein, by purchase, condemnation, lease or otherwise. So long s the lands, or any rights or interest therein, are held in fee simple by the United States, and no longer, such lands, rights or interest, as the case may be, shall continue exempt and exonerated, from all state, county and municipal taxes which may be levied or imposed under the authority of this State. (1936, p. 612; Michie Code 1942, Sec. 19d.)

WASHINGTON

The Constitution of the State of Washington, article XXV,section--

Sec. 1. Authority of the United States.--The consent of the State of Washington is hereby given to the exercise, by the congress of the United States, of exclusive legislation in all cases whatsoever over such tracts or parcels of land as are now held or reserved by the government of the United States for the purpose of erecting or maintaining thereon forts, magazines, arsenals, dockyards, lighthouses and other needful buildings, in accordance with the provisions of the seventeenth paragraph of the eighth section of the first article of the Constitution of the United States, so long as the same shall be so held and reserved by the United States. Provided: That a sufficient description by metes and bounds, and an accurate plat or map of each

such tract or parcel of land be filed in the proper office of record in the county in which the same is situated,together with copies of the orders, deeds patents or other evidences in writing of the title of the United States: and provided, that all civil process issued from the courts of this state and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservations,may be served and executed thereon in the same mode and manner, and by the same officers, as if the consent herein given had not been made.

Revised Code of Washington, 1951, 37, title 37, chapter 37.04, sections--

37.04.010. Consent given to acquisition of land by United States.--The consent of this state is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any land acquired, or to be acquired, in this state by the United States, from any individual, body politic or corporate, as sites for forts, magazines, arsenals, dockyards, and other needful buildings or for any other purpose whatsoever. The evidence of title to such land shall be recorded as in other cases. [1939 c 126 Sec. 1; RRS Sec. 8108-1.]

37.04.020 Concurrent jurisdiction ceded-Reverter.--Concurrent jurisdiction with this state in and over any land so acquired by the United States shall by, and the same is hereby, ceded to the United States, for all purposes for which the land was acquired; but the jurisdiction so ceded shall continue no longer than the United States shall be the owner of such land, and if the purposes of any grant to or acquisition by the United States shall cease, or the United States shall for five consecutive years fail to sue any such land for the purposes of the grant or acquisition, the jurisdiction hereby ceded over the same shall cease and determine, and the right and title thereto shall revest in the state. The jurisdiction ceded shall not vest until the United States shall acquire title of record to such land. [1939 c 126 Sec. 2; RRS Sec. 8108-2.]

37.04.030. Reserved jurisdiction of state.--The state of Washington hereby expressly reserves such jurisdiction and authority over land acquired or to be acquired by the United States as is not inconsistent with the jurisdiction ceded to the United States by virtue of such acquisition. [1939 c 126 Sec. 3; RRS Sec. 8108-3.]

37.04.040. Previous cessions of jurisdiction saved.--Jurisdiction heretofore ceded tot he United States over any land within this state by any previous act of the legislature shall continue according to the terms of the respective cessions: Provided, That if jurisdiction so ceded has not been affirmatively accepted by the United States, or if the United States has failed or ceased to use any such land for the purposes for which acquired, jurisdiction here over shall be governed by the provisions of this chapter. [1939 c 126 Sec. 4; RRS Sec. 8108-4.]

37.08.010. County may aid in acquisition of land for permanent military reservations. Whenever the Secretary of War shall agree on behalf of the federal government, to establish in any county now or hereafter organized in this state a permanent mobilization, training, and supply station for any or all such military purposes as are

now or may be hereafter authorized or provided by or under federal law, on condition that land in such county aggregating approximately a designated number of acres at such location or locations as may have been or hereafter be from time to time selected or approved by the Secretary of War, be conveyed to the United States, with the consent of the state of Washington, free from cost to the United States, and the board of county commissioners of such county shall adjudge that it is desirable and for the general welfare and benefit of the people of the county and for the interest of the county to incur an indebtedness in an amount sufficient to acquire land in such county aggregating approximately the number of acres so designated at such location or locations as have been or may be hereafter selected or approved by the Secretary of War, and convey all of such lands to the United States to be used by the United States for any or all such military purposes, including supply stations, the mobilization, disciplining, and training of the United States army, state militia, and other military organizations as are now or may be hereafter authorized or provided by or under federal law, such county is hereby authorized and empowered by and through its hoard of county commissioners to contract indebtedness for such purposes in any amount not exceeding, together with the existing indebtedness of such county, five percent of the taxable property of such county, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, whenever there-fifths of the voters of such county, voting on the question assent thereto at an election to be held for that purpose consistent with the general election laws, which election may be a special or general election. [1917 c. 4 Sec. 2.]

37.08.180. Jurisdiction ceded.--Pursuant to the Constitution and laws of the United States, and specially article 1, section 8, paragraph 17 of such Constitution, the consent of the state of Washington is hereby given to the United States to acquire by donation from any county acting under the provisions hereof, title to all lands acquired hereunder to be evidenced by the deed or deeds of scud county, signed by the chairman of its board of county commissioners and attested by the clerk thereof under the seal of the board; and the consent of the state of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever, over such tracts or parcels of land so conveyed to it: Provided, That upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate plat or map of each tract or parcel of land shall be filed in the office of the auditor of the county in which the lands are situated, together with copies

of the orders, deeds, patents, or other evidences in writing of the title of the United States: Provided further, That all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime in cases arising outside of such mode and manner and by the same officers as if the consent herein given had not been made [1917 c 4 Sec. 22.]

WEST VIRGINIA

The West Virginia Code of 1955, Annotated, chapter 1, article 1, sections--

Sec. 3.[3] Acquisition of Lands by United States; Jurisdiction.--The consent of this State is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any land acquired, or to be acquired in this State by the United States, from any individual, body politic or corporate, for sites for lighthouses, beacons, signal stations, post officer, customhouses, courthouses, arsenals, soldiers' homes, cemeteries, locks, dams, armor plate manufacturing plants, projectile factories or factories of any kind or character, or any needful buildings or structures or proving grounds, or works for the improvement of the navigation of any watercourse, or work of public improvement whatever, or for the conservation of the forests, or for any other purpose for which the same may be needed or required by the government of the United States. The evidence of title to such land shall be recorded as in other cases.

Any county, magisterial district or municipality, whether incorporated under general law or special act of the legislature, shall have power to pay for any such tract or parcel of land and present the same to the Government of the United States free of cost, for any of the purposes aforesaid, and to issue bonds and levy taxes for the purpose of paying for the same; and, in the case of a municipal corporation, the land so purchased and presented may be within the corporate limits of such municipality or within five miles thereof: Provided, however, That no such county, magisterial district or municipality shall, by the issue and sale of such bonds, cause the aggregate of its debt to exceed the limit fixed by the Constitution of this State: Provided further, That the provisions of the Constitution and statutes of this State, or of the special act creating any municipality, relating to submitting the question of the issuing of bonds and all questions connected with the same to a vote of the people, shall, in all respects, be observed and complied with.

Concurrent jurisdiction with this State in and over any land so acquired by the United States shall be, and the same is hereby, ceded

to the United States for all purposes; but the jurisdiction so ceded shall continue no longer than the United States shall be the owner of such lands and if the purposes of any grant to the United States shall cease, or the United States shall for five consecutive years fail to use any such land for the purposes of the grant, the jurisdiction hereby ceded over the same shall cease and determine, and the right and title thereto shall reinvest in this State. The jurisdiction ceded shall not vest until the United States shall acquire title of record to such land. Jurisdiction heretofore ceded to the United States over any land within this State by any previous acts of the legislature shall continue according to the terms of the respective cessions. (1881, c. 20 Sec. 4; 1909, c. 61; 1917, 2nd Ex. Sess., c. 5; Code 1923, c. 1, Sec. 4.)

Sec. 4. [4] Execution of Process and Other Jurisdiction as to Land Acquired by United States.--The States of West Virginia reserves the right to execute process civil or criminal within the limits of any lot or parcel of land heretofore or hereafter acquired by the United States as aforesaid, and such other jurisdiction and authority over the same as is not inconsistent with the jurisdiction ceded to the United States by virtue of such acquisition (1881, c. 20 Sec. 5; Code 1923, c. 1 Sec. 5.)

WISCONSIN

Wisconsin Statutes, 1953, title 1, chapter 1, sections--

1.01. State sovereignty and jurisdiction.--The sovereignty and jurisdiction of this state extend to all places within the boundaries thereof as declared in the constitution, subject only to such rights of jurisdiction as have been or shall be acquired by the United States over any places therein; and it shall be the duty of the governor, and of all subordinate officers of the state, to maintain and defend its sovereignty and jurisdiction. Such sovereignty and jurisdiction are hereby asserted and exercised over the St. Croix river from the eastern shore thereof to the center or thread of the same, and the exclusive jurisdiction to obstruct the navigation of said river east of the center or thread thereof, or to enter upon the same and build piers, booms or other fixtures, or to occupy any part of said river east of the center or thread thereof for the purpose of sorting or holding logs, is denied; such acts can only be authorized by the concurrent consent of the legislature of this state.

1.02. United States sites and buildings.--Subject to the conditions mentioned in section 1.03 the legislature hereby consents to the acquisition heretofore, effected and hereafter to be effected by he United States, by gift, purchase or condemnation proceedings, of the title to places or tracts of land within the state; and, subject to said conditions,

the state hereby grants, cedes and confirms to the United States exclusive jurisdiction over all such places and tracts. Such acquisitions are limited to the following purposes:

(1) To sites for the erection of forts, magazines, arsenals, dockyards, custom houses, courthouses, post offices, or other public buildings or for any purpose whatsoever contemplated by the seventeenth clause of section eight of article one of the constitution of the United States.

(2) To all land now or hereafter included within the boundaries of Camp McCoy in townships 17, 18 and 19 north, ranges 2 and 3 west, near Sparta, in Monroe county, to be used for military purposes as a target and maneuvering range and such other purposes as the department of the army may deem necessary and proper.

(3) To erect thereon dams, abutments, locks, lockkeepers' dwellings, chutes, or other structures necessary or desirable in improving the navigation of the rivers or other waters within and on the borders of this state.

(4) To the SW 1/4 of the NE 1/4 of section 6, township 19 north, range 2 west of the fourth principal meridian to be used for military purposes as a target and maneuvering range and such other purposes as the department of the army may deem necessary and proper.

HISTORY: 1953 c. 548, 549.

1.03 Concurrent jurisdiction over United States sites; conveyances.--The conditions mentioned in section 1.02 are the following conditions precedent:

(1) That an application setting forth an exact description of the place or tract so acquired shall be made by an authorized officer of the United States to the governor, accompanied by a plat thereof, and by proof that all conveyances and a copy of the record of all judicial proceedings necessary to the acquisition of an unincumbered title by the United States have been recorded in the office of the register of deeds of each county in which such place or tract may be situated in

whole or in part.

(2) That the ceded jurisdiction shall not vest in the United States until they shall have complied with all the requirements on their part of sections 1.02 and 1.03, and shall continue so long only as the place or tract shall remain the property of the United States.

(3) That the state shall forever retain concurrent jurisdiction over every such place or tract to the extent that all legal and military process issued under the authority of the state may be served anywhere thereon, or in any building situate in whole or in part thereon.

1.04. United States sites exempt from taxation.--Upon full compliance by the United States with the requirements of sections 1.02 and 1.03, relating to the acquisition of any place or tract within the state

the governor shall execute in duplicate, under the great seal, a certificate of such consent given and of such compliance with said sections, one of which shall be delivered to such officer of the United States and the other filed with the secretary of state. Such certificate shall be sufficient evidence of such consent of the legislature and of such compliance with the conditions specified. All such places and tracts after such acquisition and while owned by the United States, shall be and remain exempt from all taxation and assessment by authority of the state.

1.05. United States sites for aids to navigation.--Whenever the United States shall desire to acquire title to any land belonging to the state and covered by the navigable waters of the United States, for sites for lighthouses, beacons, or other aids to navigation, the governor may, upon application therefor by any authorized officer of the United States, setting forth an exact description of the place desired, and accompanied by a plat thereof, grant and convey to the United States, by a deed executed by him in the name of the state and under the great seal, all the title of the state thereto; and such conveyance shall be evidence of the consent of the legislature to such purchase upon the conditions specified in section 1.03.

WYOMING

Wyoming Compiled Statutes, 1945, Annotated, chapter 24, article 8, section--

24-801. Acquisition of lands by purchase or condemnation--Reservation of mineral rights.--The United States shall be and is authorized to acquire by purchase or condemnation or otherwise, any land in this State required for public buildings, custom houses, arsenals, national cemeteries, or other purposes essential to the National Defense in necessary use of said land by armed naval, air or land forces, or land to be physically occupied by the Boysen Dam, its reservoir, power plant and distribution systems, or lands to be physically occupied by dams, reservoirs, power plants and distribution systems in United States Reclamation Service Projects, and the State of Wyoming hereby consents thereto, provided that the mineral content of lands so acquired, if owners thereof so elect, shall be reserved to such owners. [Laws 1897, ch. 17, Sec. 1; R.S. 1899, Sec. 2657; C.S. 1910, Sec. 697; C.S. 1920, Sec. 810; R.S. 1931, Sec. 118-101; Laws 1941, ch. 97, Sec. 1.]

24-802. Jurisdiction ceded to United States.--The jurisdiction of the State of Wyoming in and over any land so acquired by the United States shall be, and the same is hereby [Secs. 24-801--24-804] ceded to the United States, but the jurisdiction so ceded shall continue no longer than the said United States shall own he said land. [Laws

1897, ch. 17, Sec. 2; R.S. 1899, Sec. 2658; C.S. 1910, Sec. 698; C.S. 1920, Sec. 811; R.S. 1931, Sec. 118-102.]

24-803. Jurisdiction retained by state in certain cases.--The said consent is given and the said jurisdiction ceded upon the express condition that the state of Wyoming shall retain concurrent jurisdiction with the United States in and over the said land, so far as that all civil process, in all cases, and such criminal and other process as may issue under the laws or authority of the state of Wyoming against any person or persons charged with crimes or misdemeanors committed within said state, may be executed therein in the same way and manner as if such process may affect the real or personal property of the United States. [Laws 1897, ch. 17, Sec. 3; R.S. 1899, Sec. 2659; C.S. 1910, Sec. 699; C.S. 1920, Sec. 812; R.S. 1931, Sec. 118-103.]

24-804. When jurisdiction vests.--The jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase or condemnation or otherwise, and so long as the said land shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exonerated from all taxes, assessments and other charges which may be levied or imposed under the authority of this state. [Laws 1897, ch. 17, Sec. 4; R.S. 1899, Sec. 2660; C.S. 1910, Sec. 700; C.S. 1920, Sec. R.S. 1931, Sec. 118-104.]

GENERAL STATUES GRANTING CONSENT OF STATES TO PURCHASE OF LANDS UNDER THE MIGRATORY BIRD CONSERVATION ACT [1] (16 U.S.C. 715-715r)

Alabama.--The Code of Alabama, 1940, title 8, section 110.

Arkansas.--Arkansas Statutes, 1947, section 10-1111.

California.--Deering's California Codes, Fish and Game Code division 3, chapter 5, section 375-380.

Colorado.--Colorado Revised Statutes, 1953, chapter 142, article 1, section 142-1-2.

Connecticut.--The General Statutes of Connecticut, Revision of 1949, title LVII, chapter 360, section 7172.

[1] Section 8 of the Migratory Bird Conservation Act (16 U.S.C. 715g) expressly provides that the jurisdiction of the State over persons upon migratory-bird reservations shall not be affected or changed; and section 12 of the Weeks Forestry Act, as amended (16 U.S.C. 480), states that the State in which any national forest is situated shall not lose its jurisdiction over such national forest, not the inhabitants thereof their rights and privileges as citizens. In view of these provisions of Federal law the United States does not exercise legislative jurisdiction over the properties to which they pertain and holds them in proprietorial interest status only, notwithstanding State consent to Federal acquisition of such properties. The Committee feels that the mentioned State consent statutes are of sufficient importance and are sufficiently related to the subject of legislative jurisdiction that references to them should be included in this Appendix.

Delaware.--Laws of the State of Delaware, 1931, title 2, chapter 3, pages 18-19.

Georgia.--Code of Georgia, Annotated, 1933, section 15-304.

Idaho.--Idaho Code (Published by authority of Laws 1947, chapter 224), chapter 26, section 36-2605.

Illinois.--Jones Illinois Statutes Annotated, chapter 126, sections 126.369-126.370.

Indiana.--Burns Indiana Statutes Annotated (1951 Replacement), title 11, chapter 9, section 11-909.

Iowa.--Code of Iowa, 1954, title 1, chapter 1, sections 1.9-1.10.

Kentucky.--Kentucky Revised Statutes, 1953, chapter 150, section 150.270.

Louisiana.--Louisiana Revised Statutes of 1950, title 52, chapter 1, section 1.

Maine.--Revised Statutes of the State of Maine, 1954, chapter 36, section 31.

Maryland.--The Annotated Code of Maryland, Edition of 1951, article 96, section 31.

Michigan.--The Compiled Laws of the State of Michigan, 1948, section 3.321.

Minnesota.--Minnesota Statutes Annotated, part 1, chapter 1, section 1.041.

Mississippi.--Mississippi Code 1942, Annotated, title 23, chapter 2, section 1.041.

Missouri.--Vernon's Annotated Missouri Statutes, title II, chapter 12, section 12.050.

Nebraska.--Revised Statutes of Nebraska, 1943, chapter 37, article 4, section 37-423.

Nevada.--Nevada Compiled Laws, Supplement 1943-49, sections 2898.02-2898.16.

New Hampshire.--New Hampshire Revised Statutes Annotated, 1955, title IX, chapter 121, section 121: 1-21: 8.

New Jersey.--New Jersey Statutes Annotated, title 23, chapter 4, section 23: 4-56.

New Mexico.--New Mexico Statutes, 1953, Annotated, chapter 7, article 2, section 7-2-2.

New York.--McKinney's Consolidated Laws of New York, Annotated, Book 10, Conservation Law, article 4, section 367.

North Carolina.--The General Statutes of North Carolina (Recompiled 1950), chapter 104, article 1, section 104-10.

North Dakota.--North Dakota Revised Code of 1943, title 20, chapter 20-11, section 20-1113.

Ohio.--Baldwin's Ohio Revised Code, Annotated, 1953, section 159.03.

Oklahoma.--Oklahoma Statutes Annotated, title 29, section 603.

Oregon.--Oregon Revised Statutes, 1953, chapter 272, section 272.060.

Rhode Island.--Rhode Island General Laws of 1938 (Annotated), title 1, chapter 2, section 3.

South Carolina.--Code of Laws of South Carolina, 1952, title 39, chapter 2, article 1, section 39.51.

South Dakota.--South Dakota Code of 1939, title 25, chapter 25.02,

section 25.0202.
Tennessee.--Williams Tennessee Code, Annotated, 1934, title 12, chapter 3, article XV, section 5193.1-5193.2.
Texas.--Vernon's Annotated Revised Civil Statutes of the State of Texas (Revision of 1925), title 67, article 4050a.
Vermont.--The Vermont Statutes, Revisions of 1947, title 30, chapter 279, section 6556.
Virginia.--Acts of the General Assembly of the State of Virginia, 1930, chapter 272, approved March 24, 1930, page 697.
Washington.--Revised Code of Washington, 1951, title 37, chapter 37.08, section 37.08.230.
West Virginia.--The West Virginia Code of 1955, chapter 1, article 1, section 3.
Wisconsin.--Wisconsin Statutes, 1953, title 1, chapter 1, section 1.036.

STATE STATUTES GIVING CONSENT OF STATES TO PURCHASE OF LANDS UNDER THE WEEKS FORESTRY ACT OF MARCH 1, 1911 [1] (36 STAT. 961), AS AMENDED

Alabama.--The Code of Alabama, 1940, title 59, section 2.
Arkansas.--Arkansas Statutes, 1947, sections 10-1105 and 10-1106.
California.--Deering's California Codes, Government Code, title I, division 1, chapter 1, section 126.
Florida.--Florida Statutes Annotated, title II, chapter 6, sections 6.06-6.07.
Georgia.--Code of Georgia, Annotated, section 15-304.
Idaho.--Idaho Code (Published by Authority of Laws 1947, chapter 224), title 58, chapter 7, section 58-706.
Illinois.--Jones Illinois Statutes Annotated, chapter 137, sections 137.19-137.20.

[1] See footnote on p. 225.

Indiana.--Burns Indiana Statutes Annotated (1951 Replacement), title 62, chapter 10, sections 62-1019 and 62-1020.
Iowa.--Code of Iowa, 1954, title 1, chapter 1, sections 1.9-1.10.
Kentucky.--Kentucky Revised Statutes, 1953, chapter 3, section 3.080.
Louisiana.--Louisiana Revised Statutes of 1950, title 56, chapter 4, section 1483.
Maine.--Revised Statutes of the State of Maine, 1954, chapter 36, sections 28-32.
Michigan.--The Compiled Laws of the State of Michigan, 1948, sections 3.401 and 3.402.
Minnesota.--Minnesota Statutes Annotated, sections, 1.041-1.043, 1.045-1.047.
Mississippi.--Mississippi Code 1942, Annotated, title 17, chapter 11, sections 4156 and 4156A.
Missouri.--Vernon's Annotated Missouri Statutes, title 2, chapter 12, sections 12.010 and 12.020.
Montana.--Revised Codes of Montana, 1947, Annotated, title 83, chapter 1, section 83-110.
Nevada.--Nevada Compiled Laws, Supplement 1931-1941, sections 2899-2299.02.
New Hampshire.--Laws of the State of New Hampshire, 1903, chapter 137, approved January 20, 1903, page 147; New Hampshire Revised Statutes Annotated, 1955, title IX, chapter 121, sections 121:1-121:8.

New Mexico.--Laws of the State of New Mexico, 1937, chapter 158, approved March 15, 1937, page 441.

North Carolina.--The General Statutes of North Carolina (Recompiled 1950), chapter 104, article 1, section 104-5.

North Dakota.--North Dakota Revised Code of 1943, title 54, chapter 54-01, sections 54-0115 and 54-0116.

Ohio.--Baldwin's Ohio Revised Code, Annotated, 1953, chapter 1503, section 1503.32.

Oklahoma.--Oklahoma Statutes Annotated, title 80, sections 6-7.

Oregon.--Oregon Revised Statutes, 1953, chapter 272, sections 272.040, 272.050.

Pennsylvania.--Purdon's Pennsylvania Statutes Annotated, Title 32, chapter 3, sections 101-4.

Rhode Island.--Rhode Island General Laws of 1938 (Annotated), title I, chapter 2, section 4.

South Carolina Code of 1952, Annotated, title 39, chapter 2, article 5, sections 39-91 to 39-95.

South Dakota.--South Dakota code of 1939, title 55, chapter 55.01, section 55.0103.

Tennessee.--Williams Tennessee Code, Annotated, 1934, title 12, chapter 3, article XVII, sections 5201.2-5201.8.

Texas.--General Laws of the State of Texas, 1933, Senate Concurrent Resolution No. 73, filed in Department of State, May 26, 1933, page 1013.

Utah.--Utah Code Annotated 1953, title 65, chapter 6, section 65-6-1.

Vermont.--The Vermont Statutes, Revision of 1947, title 3, chapter 4, section 63-65.

Virginia.--Acts and Joint Resolutions passed by the General Assembly of the State of Virginia, Extra Session of 1901, chapter 229, approved February 15, 1901, page 247.

Washington.--Revised Code of Washington, 1951, title 37, chapter 37-08, section 3708220.

West Virginia.--Acts of the Legislature of West Virginia, 1909, chapter 61, approved February 27, 1909, page 494.

Wisconsin.--Wisconsin Statutes, 1953, title 1, chapter 1, section 1.055.

PART B. FEDERAL CONSTITUTIONAL PROVISIONS AND STATUTES OF GENERAL EFFECT RELATING TO THE ACQUISITION AND EXERCISE OF LEGISLATIVE JURISDICTION BY THE UNITED STATES

CONSTITUTION OF THE UNITED STATES

Article I, section 8, clause 17:
The Congress shall have Power * * *

* * *

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

Article IV, section 3, clause 2:

* * *

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *.

STATUTES RELATING TO THE ACQUISITION OF LEGISLATIVE JURISDICTION BY THE UNITED STATES

Portion of the act of July 30, 1947, United States Code, 1952 Edition, title 4, section--

Sec. 103. Assent to purchase of lands for forts.--The President of the United States is authorized to procure the assent of the legislature of any State, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, without such consent having been obtained (July 30, 1947, ch. 389, Sec. 1, Stat. 641).

Sec. 287. Jurisdiction of United States.--From the time any State legislature shall give the consent of such State to the purchase by the

United States of any national cemetery, the jurisdiction and power of legislation of the United States over such cemetery shall in all courts and places be held to be same as is general by section 8, Article I, of the Constitution of the United States; and all provisions relating to national cemeteries shall be applicable to the same. (R.S. Sec. 4882.) DERIVATION: Act July 1, 1870, ch. 200, Sec. 1, 16 Stat. 188.

Portion of the Act of March 3, 1821, United States Code, 1952

Edition, Title 33, Section--

Sec. 727. Lighthouse and other sites; necessity for cession by State of jurisdiction.--No lighthouse, beacon, public piers, or landmark, shall be built or erected on any site until cession of jurisdiction over the same has been made to the United States. (R.S. Sec. 4661.) DERIVATION: Act Mar. 3, 1821, ch. 52, Sec. 3, 3 Stat. 644.

Act of March 2, 1795, United States Code, 1952 Edition, Title 33, Section--

Sec. 728. Sufficiency of cession by State; service of State process in lands ceded.--A cession by a State of jurisdiction over a place selected and the site of a lighthouse, or other structure or work, shall be deemed sufficient within section 727 of this title, notwithstanding it contains a reservation that process issued under authority of such State may continue to be served within such place. And notwithstanding any such cession of jurisdiction contains no such reservation, all process may be served and executed within the place ceded, in the same manner as if no cession had been made (R.S. Sec. 4662). DERIVATION: Act Mar. 2, 1795, ch. 40, Secs. 1, 2, 1 Stat. 426.

Portion of the act of September 11, 1841, which became section 355 of the Revised Statutes of the United States (33 U.S.C. 733, 34 U.S.C. 520, 40 U.S.C. 255, 50 U.S.C. 175 (1934 Edition)), as codified prior to amendment of February 1, 1940--

No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given.

Portions of section 355 of the Revised Statutes of the United States, as amended (Code, 1952 Edition)--

No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, or other public building of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title.

* * *

Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure form the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial not theretofore obtained over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such

jurisdiction has been accepted. (R.S. Sec. 355; June 28, 1930, ch. 710, 46 Stat. 828; Feb. 1, 1940, ch. 18, 54 Stat. 19; Oct. 9, 1940, ch. 793, 54 Stat. 1083, July 26, 1947, ch. 343, title II, Sec. 205 (a), 61 Stat. 501.)

STATUTES PRESERVING JURISDICTION OF STATES OVER CERTAIN FEDERAL AREAS AND CIVIL AND POLITICAL RIGHTS OF INHABITANTS THEREOF

Portion of the act of August 21, 1935, United States Code, 1952 Edition, title 16--

By this act, the Secretary of the Interior, through the National Park Service, is authorized to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States, and is empowered, for the purposes of the act, to acquire in the name of the United States real or personal property. Section 5, which relates to the jurisdiction of States in lands acquired, is set out in the Code as follows:

Sec. 456. Jurisdiction of States in lands acquired.--Nothing in sections 461-467 of this title shall be held to deprive any state, or political subdivision thereof, of its civil and criminal jurisdiction in and over

lands acquired by the United States under said sections. (Aug. 21, 1935, ch. 593, Sec. 5, 49 Stat. 668.)

Portions of the "Weeks Forestry Act" of March 1, 1911, as amended, United States Code, 1952 Edition, title 16, sections--

Sec. 480. Civil and criminal jurisdiction.--The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State. (June 4, 1897, ch. 2, Sec. 1, 30 Stat. 36; Mar. 1, 1911, ch. 186, Sec. 12, 36 Stat. 963.)

Sec. 516. Purchase of lands approved by commission; consent of State; exchange of lands; cutting and removing timber.--The Secretary of Agriculture is authorized to purchase, in the name of the United States, such lands as have been approved for purchase by the National Forest Reservation Commission at the price or prices fixed by said commission. No deed or other instrument of conveyance shall be accepted or approved by the Secretary of Agriculture under this section until the legislature of the State in which the land lies shall have consented to the acquisition of such land by the United States for the purpose of preserving the navigability of navigable streams. * * *

Portions of the "Migratory Bird Conservation Commission was created to pass upon areas of land, water or land and water recommended by the Secretary of the Interior for purchase or rental as wildlife refuges. The Secretary was authorized to purchase or rent such areas as have been approved by the Commission. Sections 7 and 8 of the Acts are set out in the Code as follows:

Sec. 715f. Same; consent of State to conveyance.--No deed or instrument of conveyance shall be accepted by the Secretary of the

Interior under sections 715-715d, 715e, 715f--715k, and 715l--715r of this title unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State. (Feb. 18, 1929, 4 F.R. 2731, 53 Stat. 1432.)

Sec. 715g. Jurisdiction of State over areas acquired.--The jurisdiction of the State, both civil and criminal, over persons upon areas acquired under sections 715--715d, 715e, 715f--715k, and 715l--715r of this title

shall not be affected or changed by reason of their acquisition and administration by the United States as migratory-bird reservations, except so far as the punishment of offenses against the United States is concerned. (Feb. 18, 1929, ch. 257, Sec. 45 Stat. 1224.)

Portion of the Federal Power Act, United States Code, 1952 Edition, title 16--

The Federal Power Commission, which was created and established by the Act, was authorized, among other things, to make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed and to issue licenses for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction to regulate commerce. In the Code, section 27 appears as follows:

Sec. 821. State laws and water rights unaffected.--Nothing contained in this chapter shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein. (June 10, 1920, ch. 285, Sec. 27, 41 Stat. 1077.)

Sec. 421. Jurisdiction of State or political subdivision; civil rights under local law preserved.--The acquisition by the United States of any real property in connection with any low-coat housing, or slum-clearance project constructed with funds allotted to the Administrator of General Services pursuant to any law shall not be held to deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or to impair the civil rights under the local law of the tenants or inhabitants on such property; and insofar as any such jurisdiction has been taken away from any such State or subdivision, or any such rights have been impaired, jurisdiction over any such property is ceded back to such State or subdivision. (June 29, 1936, ch. 860, Sec. 1, 49 Stat. 2025; 1939 Reorg. Plan No. 1, Secs. 301, 305, eff. July 1, 1939, 4 F.R. 2729, 53 Stat. 1426, 1427; 1943 Ex. Ord. No. 9357, June 30, 1943, 8 F.R. 9041; June 30, 1949, ch. 288, title I, Sec. 103, 63 Stat. 380.)

Portion of the United States Housing Act of 1937, as amended, United States Code, 1952 Edition, title 42--

The Public Housing Administration was authorized to make loans to public-housing agencies to assist the development, acquisition, or administration of low-rent-housing or slum-clearance projects by such agencies. The Administration may foreclose on any property

and may purchase at foreclosure or acquire any project which it

previously owned or in connection with which it made a loan. Section 13 (b) of the Act relating to State civil and criminal jurisdiction appears in the Code as Section 1413 (b) and reads as follow:

(b) Civil and criminal jurisdiction of States.--The acquisition by the Administration of any real property pursuant to this chapter shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property or impair the civil rights under the State or local law of the inhabitants on such property; and, insofar as any such jurisdiction may have been taken away or any such rights impaired by reason of the acquisition of any property transferred to the Administration pursuant to section 1404 (d) of this title, such jurisdiction and such rights are fully restored.

Portions of the act of October 14, 1940, as amended, United States Code, 1952 Edition, title 42, sections--

Sec. 1521. Housing and House Finance Administrator's powers respecting defense housing.--In order to provide housing for persons engaged in national-defense activities, and their families, and living quarters for single persons so engaged, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would to be provided by private capital when needed, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized:

(a) To acquire prior to the approval of title by the Attorney General (without regard to section 1339 of title 10 and section 5 of title 41), improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to sections 40a and 34 of title 40, or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under sections 257, 258, 361--386, and 258a--258e of title 40).

* * *

Sec. 1547. Preservation of local civil and criminal jurisdiction and civil rights.--Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to subchapters II-VII of this chapter shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term "State" shall include the District of Columbia. (Oct. 14, 1940, ch. 862, title III, Sec. 10, 54 Stat. 1128; renumbered Sec. 307

and amended June 28, 1941, ch. 260, Sec. 4 (b), 55 Stat. 363; 1942 Ex. Ord. No. 9070, Sec. 1, Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, ch. 239, Sec. 3 (b), 56 Stat. 212; 1947 Reorg. Plan. NO. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, ch. 288, title I, Sec. 103, 63 Stat. 380; Apr. 20, 1950, ch. 94, title II, Sec. 204, 64 Stat. 73.)

Portions of the Defense Housing and Community Facilities and Service Act of 1951--1591c of this title, and of this subchapter, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for

defense workers or military personnel or to extend assistance for the provision of, or to provide community facilities or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be a critical defense housing area. (Sept. 1, 1951, ch. 378, title III, Sec. 301, 65 Stat. 303.)

Sec. 159f. Preservation of local civil and criminal jurisdiction, and civil rights; jurisdiction of State courts.--Notwithstanding any other provisions of law, the acquisition by the United States of any real property pursuant to this subchapter or subchapter X of this chapter shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property, or impair the civil or other rights under the Stat or local law of the inhabitants of such property. Any proceedings by the United States for the recovery of possession of any property or project acquired, developed, or constructed under this subchapter or subchapter X of this chapter may be brought in the courts of the States having jurisdiction of such causes. (Sept. 1, 1951, ch. 378, title III, Sec. 65 Stat. 307.)

Portions of the Reclamation Law, United States Code, 1952 Edition, title 43--

This act provides for the irrigation of, and related benefits to, lands in the 17 Western States by the Federal Government. Section 383 of the Code which states that the law shall not be construed as affecting or interfering with State laws relating to water is set out as follows:

Sec. 383. Vested rights and State laws unaffected by certain sections.--Nothing in sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491 and 496 of this title shall be construed as affecting or intended to affect or in any way interfere with the laws of any

State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation or any vested right acquired thereunder, and the secretary of the Interior, in carrying out the provisions of such sections, shall proceed in conformity with such laws, and nothing in such sections shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof. (June 17, 1902, ch. 1093, Sec. 8, 32 Stat. 390.)

Sections 455-455c provide that the lands of homestead and desert land entrymen may be taxed by the States or political subdivisions in which they are located, and that such taxes shall be a lien upon the lands, but that if the lands of such entrymen revert to the United States all liens shall be extinguished.

STATUTES EXTENDING CERTAIN STATE LEGISLATION TO FEDERAL AREAS

Lea Act (Portion of act of July 30, 1947), United States Code, 1952 Edition, title 4, section--

Sec. 104. Tax on motor fuel sold on military or other reservation, reports to State taxing authority.--(a) All taxes levied by any State, Territory, or the District of Columbia upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other

motor vehicle fuels may be levied, in the same manner and to the same extent, with respect to such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. Such taxes, so levied shall be paid to the proper taxing authorities of the States, Territory, or the District of Columbia, within whose borders the reservation affected may be located.

(b) The officer in charge of such reservation shall, on or before the fifteenth day of each month, submit a written statement to the proper taxing authorities of the State, Territory, or the District of Columbia within whose borders the reservation is located, showing the amount of such motor fuel with respect to which taxes are payable under subsection (a) for the preceding month. (July 30, 1947, ch. 389, Sec. 1, 61 Stat. 641.)

Buck Act (Portions of act of July 30, 1947), United States Code, 1952 Edition, title 4, sections--

Sec. 105. State, and so forth, taxation affecting Federal areas; sales or use tax.--(a) No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any

State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to sales or purchases made, receipts from sales received, or storage or use occurring, after December 31, 1940, 1947, ch. 389, Sec. 1, 61 Stat. 641.)

Sec. 106. Same; income tax.--(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940. (July 30, 1947, ch. 389, Sec. 1, 61 Stat. 641.)

Sec. 107. Same; exception of United States, its instrumentalities, and authorized purchases therefrom.--(a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.

(b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary unincorporated

organizations of Army or Navy personnel, under regulations promulgated by the Secretary of War or the Secretary of the Navy. (July 30, 1947, ch. 389, Sec. 1, 61 Stat. 641.)

Sec. 108. Same; jurisdiction of United States over Federal areas unaffected.--The provisions of sections 105-110 of this title shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over an Federal area. (July 30, 1947, ch. 389, Sec. 61 Stat. 641.)

Sec. 109. Same; exception of Indians.--Nothing in section 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed. (July 30, 1947, ch. 384, Sec. 1, 61 Stat. 641.)

Sec. 110. Same; definitions.--As used in sections 105-109 of this title--

(a) The term "person" shall have the meaning assigned to it in section 3797 of title 26.

(b) The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d) The term "State" includes any territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency, of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State. (July 30, 1947, ch. 389, Sec. 1, 61 Stat. 641.)

Portion of the Public Salary Tax Act of 1939, United States Code, 1952 Edition, Title 5, Section--

Sec. 84a. Consent of United States to taxation of compensation of officers and employees of United States, Territories, etc.--The United States consents to the taxation of compensation, received after December 31, 1938, for personal service as an officer or employee of the United States, any Territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, by any duly constituted taxing authority having jurisdiction to tax such compensation, if such taxation does not discriminate against such officer or employee because of the source of such compensation. (Apr. 12, 1939, ch. 59, Title I, Sec. 4, 53 Stat. 575.)

Act of July 17, 1952, United States Code, 1952 Edition, title 5--

Sec. 84b. Withholding State income taxes of Federal employees by Federal agencies.--Where--

(1) the law of any State or Territory provides for the collection of a tax by imposing upon employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the authorities of such State or Territory, and

(2) such duty to withhold is imposed generally with respect

to the compensation of employees who are residents of such State or Territory. them the secretary of the Treasury, pursuant to regulations promulgated by the President, is authorized and directed to enter into an agreement with such State or Territory hundred and twenty days of the request for agreement from the proper official of such State or Territory. Such agreement shall provide that the head of each department or agency of the United States shall comply with the requirements of such law in the case of employees of such agency or department who are subject to such tax and whose regular place of Federal employment is within the State or Territory with which such agreement is entered into. No such agreement shall apply with respect to compensation for service as a member of the Armed Forces of the United States. (July 17, 1952, ch. 940, Sec. 1, 66 Stat. 765.)

Sec. 13.58. Local jurisdiction over immigrant stations.--The officers in charge of the various immigrant stations shall admit therein the proper State and local officers charged with the enforcement of the laws of the State and local officers charged with the enforcement of the laws of the State or Territory of the United States in which any such immigrant station is located in order that such State and local officers may preserve the peace and make arrests for crimes under the laws of the State and Territories. For the purpose of its section the jurisdiction of such State and local officers and of the State and local courts shall extend over such immigrant stations. (June 27, 1952, ch. 477, title II, ch. 9, Sec. 288, 66 Stat. 234.)

Portions of the act of August 5, 1947, United States Code, 1952 Edition, title 10--

Sec. 1270. Lease of real or personal property; period of lease;; terms and conditions; revocation; disposition of receipts; report to Congress.--Whenever the Secretary of the Army shall deem it to be advantageous to the Government he is authorized to lease such real or personal property under the control of his Department as is not surplus to the needs of the Department within the meaning of the Act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest * * *

CODIFICATION: Similar provisions relating to the Air Force and Navy are set out as section 626s-3 of title 5, Executive Departments and Government Officers and Employees and section 522a of title 34, Navy, respectively.

Sec. 127d. Same; State or local taxation; renegotiation of leases.--The lessee's interest made or created pursuant to the provisions of sections 1270-1270b, and 127d of this title, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of said sections shall contain a provision that if and to the extent that such property is made taxable by State and local governments by act of Congress, in such event the terms of such lease shall be renegotiated. (Aug. 5, ch. 493, Sec. 6, 61 Stat. 775.)

CODIFICATION: Similar provisions relating to the Air Force and the

Navy are set out as section 626s-6 of title 5, Executive Departments and Government Officers and Employees and section 522e of title 34, Navy.

Act of February 1, 1928, United States Code, 1952 Edition, title 16--

Sec. 457. Action for death or personal injury within national park or other place under jurisdiction of United States; application of State laws.--In the case of the death of any person by the neglect or wrongful act of another within a national park or other place subject to the exclusive jurisdiction of the United States, within the exterior boundaries of any State, such right of action shall exist as though the place were under the jurisdiction of the state within whose exterior boundaries such place may be; and in any action brought to recover on account of injuries sustained in any such place the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which it may be. (Feb. 1, 1928, ch. 15, 45 Stat. 54.)

Portions of the act of June 25, 1948, as amended, United States Code, 1952 Edition, title 18--

Sec. 7. Special maritime and territorial jurisdiction of the United States defined.--The term "special maritime and territorial jurisdiction of the United States", as sued in this title, includes:

* * *

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof; or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

Sec. 13. Laws of States adopted for areas within Federal jurisdiction.--Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or

omitted within the jurisdiction of the State, Territory, Possession, or district in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment. (June 25, 1948, ch. 645, Sec. 1, 62 Stat. 686.)

(Assimilative Crimes Act.)

Portion of Internal Revenue Code, United States Code, 1952 Edition, title 26, section 1606, subsection--

(b) The legislature of any State may require any instrumentality of the United States (except such as are (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 1603 and (except as provided in section 5240 of the Revised Statutes, as amended, and as modified by subsection (c) of this section) to comply otherwise with such law. The permission granted in this subsection shall apply (1) only to the extent that no discrimination is made

against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk, and (2) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event said State is not certified by the secretary of Labor under section 1603 with respect to such year.

* * *

(d) No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

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Act of June 25, 1936, United States Code, 1952 Edition, title 40--

Sec. 290. State workmen's compensation laws; extension to buildings and works of United States.--Whatsoever constituted authority of each of the several States is charged with the enforcement of and requiring compliances with the State workmen's compensation laws of said States and with the enforcement of and requiring compliance with the orders, decisions, and awards of said constituted authority of said States shall have the power and authority to apply such laws to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of any State and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which is within the exterior boundaries of any State, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the State within whose exterior boundaries such place may be.

For the purposes set out in this section, the United States of America vests in the several States within whose exterior boundaries such place may be, insofar as the enforcement of State workmen's compensation laws are affected, the right, power, and authority aforesaid: Provided, however, That by the passage of this section the United States of America in nowise relinquishes its jurisdiction for any purpose over the property named, with the exception of extending to the several States within whose exterior boundaries such place may be only the powers above enumerated relating to the enforcement of their State workmen's compensation laws as herein designated: Provided further, That nothing in this section shall be construed to modify or amend the United States Employees' Compensation Act, as amended. (June 25, 1936, ch. 822, Secs. 1, 2, 49 Stat. 1938, 1939.)

Portions of the act of October 14, 1940, as amended, United States Code, 1952 Edition, title 42--

Sec. 1521. Housing and Home Finance Administrator's powers respecting defense housing.--In order to provide housing for persons engaged in national-defense activities, and their families, and living

quarters for single persons so engaged, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized:

(a) To acquire prior to the approval of title by the Attorney General (without regard to section 1339 of title 10 and section 5 of title 41), improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to sections 40a and 34 of title 40, or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under sections 257, 258, 261-386, and 258e of title 40).

* * *

Sec. 1547. Preservation of local civil and criminal jurisdiction and civil rights.--Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to subchapters II-VII of this chapter shall not deprive any State or political subdivision thereof, including any Territory or possession of the United States, of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property. As used in this section the term "State" shall include the District of Columbia. (Oct. 14, 1940, ch. 862, title III, Sec. 10, 54 Stat. 1128; renumbered Sec. 307 and amended June 28, 1941, ch. 260, Sec. 4 (b), 55 Stat. 363; 1942 Ex. Ord. No. 9070, Sec. 1, Feb. 24, 1942, 7 F.R. 1529; Apr. 10, 1942, ch. 239, Sec. 3 (b), 56 Stat. 212; 1947 Reorg. Plan No. 3, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954; June 30, 1949, ch. 288, title I, Sec. 103, 63 Stat. 380; Apr. 20. 1950, ch. 94, title II, Sec. 204, 64 Stat. 73.)

Portions of the defense Housing and Community Facilities and Services Act of 1951, United States Code, 1952 Edition, title 42--

Sec. 1592. Authority of Administrator.--Subject to the provisions and limitations of sections 1591--1591c of this title, and of this subchapter, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for defense workers or military personnel or to extend assistance for the provision of, or to provide community facilities or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be a critical defense housing area. (Sept. 1, 1951, ch. 373, title III, Sec. 301, 65 Stat. 303.)

Sec. 1592d. Administrator's power with respect to housing facilities, and services--(a) Planning, acquisition, construction, etc.

* * * Notwithstanding any provisions of this Act, housing or community facilities constructed by the United States pursuant to the authority contained herein shall conform to the requirements of

State and local laws, ordinances, rules, or regulations relating to health and sanitation, and, to the maximum extent practicable, taking into consider the availability of materials and the requirements of national defense, any housing or community facilities, except housing or community facilities of a temporary character, constructed by the United States pursuant to the authority contained herein shall conform to the requirements of State or local laws, ordinances, rules, or regulations relating to building codes.

Portion of the Outer Continental Shelf Lands Act, United States Code, 1952 Edition (Supp. II), title 43--

Sec. 1333. Laws and regulations governing lands--(a) Constitution and United States laws; laws of adjacent States; publication of projected States lines; restriction on State taxation and jurisdiction.--(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil laws of each adjacent State as of the effective date of this subchapter are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries wee extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

STATUTES GRANTING EASEMENTS, RIGHT-OF-WAY AND ROADS OVER FEDERAL LANDS SAND CEDING JURISDICTION

Act of May 31, 1947, United States Code, 1952 Edition, title 38--

Sec. 11i. Grant of easements by Administrator in lands under his control; jurisdiction over exchanged lands; termination of easement.--

The Administrator of Veterans' Affairs, whenever he deems it advantageous to the Government and upon such terms and conditions as he deems advisable, is authorized on behalf of the United States to grant to any State, or any agency or political subdivision thereof, or to any public-service company, easements in and right-of-way over lands belonging to the United States which are under his supervision and control. Such grant may include the use of such easements of rights-of-way by public utilities to the extent authorized and under the conditions imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over the areas covered by such easements or rights-of-way, as the

Administrator of Veterans' Affairs deems necessary or desirable, is ceded to the State in which the land is located. The Administrator of Veterans' Affairs is authorized to accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as he may deem necessary or desirable over the land so acquired. Any such easement or right-of-way shall be terminated upon abandonment or nonuse of the same and all right, title, and interest in the land covered thereby shall thereupon revert to the United States or its assignee. (May 31, 1947, ch. 89, 61 Stat. 124.)

Act of May 9, 1941, United States Code, 1952 Edition, title 43--

Sec. 931a. Authority of Attorney General to grant easement and rights-of-may to States, etc.--The Attorney General, whenever he deems it advantageous to the Government and upon such terms and conditions as he deems advisable, is authorized on behalf of the United States to grant to any State, or any agency or political subdivision thereof, easements in and rights-of-way over lands belonging to the United States which are under his supervision and control. Such grant may include the use of such easements or rights-of-way by public utilities to the extent authorized and under the conditions imposed by the laws of such State relating to use of public highways. Such partial, concurrent, or exclusive jurisdiction over he areas covered by such easements or rights-of-way, as the Attorney General deems necessary or desirable, is ceded to such State. The Attorney General is authorized to accept or secure on behalf of the United States from the State in which is situated any land conveyed in exchange for any such easement or right-of-way, such jurisdiction as he may deem necessary or desirable over the land so acquired. (May 9, 1941, 55 Stat. 183.)

Portion of the War Department Civil Appropriation Act, 1942, as amended, United States Code, 1952 Edition, title 24--

Sec. 289. Conveyance to State or municipality of approach road to national cemetery.--The Secretary of the Army is authorized to convey

to any State, county, municipality, or proper agency thereof, in which the same is located all the right, title, and interest of the United States in and to any Government owned or controlled approach road to any national cemetery: Provided, That prior to the delivery of any instrument of conveyance hereunder, the State, county, municipality, or agency to which the conveyance herein authorized is to be made, shall notify the Secretary of the Army in writing of its willingness to accept and maintain the road included in such conveyance: Provided further, That upon the execution and delivery of any conveyance herein authorized the jurisdiction of the United States of America over the road conveyed shall cease and determine and shall thereafter vest in the State in which said road is located. (May 23, 1941, ch. 130, Sec. 1, 55 Stat. 191, July 26, 1947, ch. 343, title II, Sec. 205 (a), 61 Stat. 501.)

MISCELLANEOUS FEDERAL STATUTES

Portion of the act of June 25, 1948, as amended, United States Code, 1952 Edition, title 18--

Sec. 3401. Petty offenses; application of probation laws; fees.--(a) Any United States commissioner specially designated for that purpose by the court by which he was appointed has jurisdiction to try and sentence persons committing petty offenses in any place over which

the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction, and within the judicial district for which such commissioner was appointed.

(b) Any person charged with a petty offense may elect, however, to be tried in the district court of the United States. The commissioner shall apprise the defendant of his right to make such election and shall not proceed to try the case unless the defendant after being so apprised, signs a written consent to be tried before the commissioner.

(c) The probation laws shall be applicable to persons so tried and the commissioner shall have power to grant probation.

(c) The probation laws shall be applicable to persons so tried and the commissioner shall have power to grant probation.

(d) For his services in such cases the commissioner shall receive the fees, and none other, provided by law for like or similar services.

(e) This section shall not apply to the district of Columbia nor shall it repeal or limit existing jurisdiction, power or authority of commissioners appointed for Alaska or in the several national parks. (June 25, 1948, ch. 645, 1, 62 Stat. 830.)

Portions of the act of June 1, 1948, as amended, United States Code, 1952 Edition, title 40--

Sec. 318. Protection of Federal property under jurisdiction of Administrator of General Services; appointment of guards as special policemen compensation; duties; jurisdiction.--The Administrator of General Services or officials of the General Services Administra-

tion duly authorized by him may appoint uniformed guards of said Administration as special policemen without additional compensation for duty in connection with the policing of public buildings and other areas under the jurisdiction of the General Services Administration. Such special policemen shall have the same powers as sheriffs and constables upon such Federal property to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations made and promulgated by the Administrator or such duly authorized officials of the General Services Administration for the property under their jurisdiction: Provided, That the jurisdiction and policing powers of such special policemen shall not extend to the service of civil process and shall be restricted to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction (June 1, 1948, ch. 359, Sec. 1, 62 Stat. 281: June 30, 1949, ch. 288, title I, Sec. 103, 63 Stat. 380.)

Sec. 318a. Same; rules and regulations; posting.--The Administrator of General Services or officials of the General services Administration duly authorized by him are authorized to make all needful rules and regulations for the government of the federal property under their charge and control, and to annex to such rules and regulations such reasonable penalties, within the limits prescribed in section 318c of this title, as will insure their enforcement: Provided, That such rules and regulations shall be posted and kept posted in a conspicuous place on such Federal property. (June 1, 1948, ch. 359, Sec. 2, 62 Stat. 281; June 30, 1949, ch. 288, title I, Sec. 103, 63 Stat. 380.)

Sec. 318b. Same; application for protection; detail of special police; utilization of federal law-enforcement agencies.--Upon the application of the head of any department or agency of the United

States having property of the United States under its administration and control and over which the United States has acquired exclusive or concurrent criminal jurisdiction, the Administrator of General Services or officials of the General Services Administration duly authorized by him are authorized to detail any such regulations and to enforce the same as set forth in sections 318-318c of this title;l and the Administrator of General Services or official of the General Services Administration duly authorized by him, whenever it is deemed economical and in the public interest, may utilize the facilities and services of existing Federal law-enforcement agencies, and services of such State or local law-enforcement agencies. (June 1, 1948, ch. 359,

Sec. 3, 62 Stat. 281, June 30, 1949, ch. 288, title I, Sec. 103, 63 Stat. 380.)

Sec. 318c. Same; penalties.--Whoever shall violate any rule or regulation promulgated pursuant to section 318a if this title shall be fined not more than $50 or imprisoned not more than thirty days, or both. (June 1, 1948, ch. 359, Sec. 4, 62 Stat. 281.)

JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

REPORT OF THE INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

PART II

A Text of the Law of Legislative Jurisdiction

Submitted to the Attorney General and transmitted to the President

June 1957

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II

III

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LETTER OF ACKNOWLEDGMENT

THE WHITE HOUSE
Washington, July 8, 1957

DEAR MR. ATTORNEY GENERAL: I have taken note of the final report (Part II) which you transmitted to me, rendered by the

Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States. It is my understanding that the report is to be published and distributed, for the purpose of making available to Federal administrators of real property, Federal and State legislators, the legal profession, and others, this text of the law of legislative jurisdiction in these areas.

In view of the fact that the work of the Committee is completed, and since other departments and agencies of the Government now have clear direction for turning this work into permanent gains in improved Federal-Study of Jurisdiction over Federal Areas within the States is hereby dissolved.

Chairman Perry W. Morton and the members of this Committee have my congratulations and sincere appreciation of their service to our country in bringing to light the facts and law in this much neglected field. This monumental work, culminating three years of exhaustive effort, lays an excellent foundation for allocating to the States some of the functions which under our Federal-State system should properly be performed by State governments.

Sincerely,
THE HONORABLE HERBERT BROWNELL, JR.,
The Attorney General,
Washington, D.C.

Preface

The Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States was formed on December 15, 1954, on the recommendation of the Attorney General approved by the President and the Cabinet. The basic purpose for which the Committee was founded was to find means for resolving the problems arising out of jurisdiction status of Federal lands. Addressing itself to this purpose, the Committee, with assistance from all Federal agencies interested in the problems (a total of 33 agencies), from State Attorneys General, and from numerous other sources, prepared a report entitled Jurisdiction over Federal Areas within the States--Part I, The Facts and Committee Recommendations.1 This report, approved by the President on April 27, 1956, set out the findings of the Committee and recommended changes in Federal and State law, and in Federal agencies' practices, designed to eliminate existing problems arising out of legislative jurisdiction. It included two appendices.

The Committee's research involved a general survey of the jurisdictional status of all federally owned real property in the 48 States, and a detailed survey of the status of individual such properties in the State of Virginia, Kansas, and California. These three named States were selected as containing Federal real properties representative of such properties in all the States. Information was procured concerning the practices and problems related to legislative jurisdiction of the 23 Federal agencies controlling real property, and of the advantages and disadvantages of the several legislative jurisdiction statuses for the various purposes for which federally owned land is used. This information is reflected and ana-

lyzed in the several chapters of part I of the report, and is summarized in appendix A of the same part.

The Committee's study included a review of the policies, practices, and problems of the 48 States related to legislative jurisdiction. Information concerning these matters similarly is reflected and analyzed in various portions of part I of the report, with chapter V of the part being entirely devoted to the laws and problems of States related to legislative jurisdiction. Also, the texts of State (and Federal) constitutional provisions and statutes related to jurisdiction in effect as of December 31, 1955, are gathered in appendix B of part I.

The major conclusions of the Committee, set out in part I of the report, which, of cause, are applicable only to the 48 States to which the Committee's study extended, and do not apply to present Territories or the District of Columbia, are to the effect that in the usual case the Federal Government should not receive or retain any of the States' legislative jurisdiction within federally owned areas, that in some special cases (where general law enforcement by Federal authorities is indicated) the Federal Government should receive or retain legislative jurisdiction only concurrently with the States, and that in any case the Federal Government should not receive or retain any of the States' legislative jurisdiction with respect to taxation, marriage, divorce, descent and distribution of property, and a variety of other matters, specified in the report, which are ordinarily the subject of State control.

The conclusions reached by the Committee were, of course, made only after an appraisal of the facts adduced during the study in the light of applicable law, including the great body of decisions handed down by courts and opinions rendered by governmental legal officers, Federal and State, interpretative of situations affected by legislative jurisdiction.

Recommendations made by the Committee, based on the conclusions indicated above and on certain subsidiary findings, now constitute the policy of the Executive branch of the Federal Government, and are being implemented by Federal agen-

cies to the extent possible under existing law. However, full implementation of these recommendations must await the enactment of certain suggested Federal and State legislation.

In the course of its study the Committee ascertained the existence of a serious lack of legal bibliography on the subject-matter of its interest. With the concurrence of the Attorney General of the United States and the encouragement of the President, it has proceeded with the publication of this part II of its report, a compilation of the court decisions and legal opinions it weighed in the course of its study of the subject of legislative jurisdiction.

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CHAPTER I

OUTLINE OF LEGISLATIVE JURISDICTION

FEDERAL REAL PROPERTIES: Holdings extensive.--The Federal Government is the largest single owner of real property in the United States. Its total holdings exceed the combined areas of the six New England States plus Texas, and the value of these holdings is enormous. They consist of over 11,-000 separate properties, ranging in size from few hundred square foot monument or post office sites to million acre military reservations, and ranging in value from nearly worthless desert lands to extremely valuable holdings in the hearts of large metropolitan centers.

Activities thereon varied.--The activities conducted on these properties are as varied as the holdings are extensive. They include, at one extreme, the development of nuclear weapons, and at the other, the operation of soft drink stands. Some of the activities are conduct in utmost secrecy, with only Government personnel present, and others, such as those in national parks, are designed for the enjoyment of the public, and the presence of visitors is encouraged. In many instances, the performance of these activities requires large numbers of resident personnel, military or civilian, or both, and the presence of these personnel in turn necessitates additional functions which, while not normally a distinctively Federal operation (e.g., the personnel), are nevertheless essential to procuring the performance of the primary Federal function.

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Legal problems many.--In view of the vastness of Federal real estate holdings, the large variety of activities conducted upon them, and the presence on many areas of resident employees and other person, it is to be expected that many legal problems will arise on or with respect to these holdings. In addition to the problems normally encountered in administering and enforcing Federal laws, complicated by occasional conflict with overlapping States laws, the ownership and operation by the Federal Government of areas within the States gives rise to a host of legal problems largely peculiar to such areas. They arise not only because of the fact of Federal ownership and operation of these properties, but also because in numerous instances the federal Government has with respect to such properties a special jurisdiction which excludes, in varying degrees, the jurisdiction of the State over them, and which in other instances is, to varying extends, concurrent with that of the State.

FEDERAL POSSESSION OF EXCLUSIVE JURISDICTION: By constitutional consent.--This special jurisdiction which is often possessed by the United States stems, basically, out of article I, section 8, clause 17, of the Constitution of the United States, which provides, in legal effect, that the Federal Government shall have exclusive legislative jurisdiction over such area, not exceeding 10 miles square, as may become the seat of government of the United States, and like authority over all places acquired by the Government, with the consent of the States involved, for various Federal purposes. It is the latter part

of the clause, the part which has been emphasized, with which this study is particularly concerned. There is a general public awareness of the fact that the United States Government exercises all governmental authority over the District of Columbia, by virtue of power conferred upon it by a clause of the Constitution. There is not the same awareness that under another provision of this same clause the United States has acquired over several thousand areas within the States some or all of these powers, judicial and executive as well as legislative, which under our Federal-State system of government ordinarily are reserved to the States.

By Federal reservation or States cession.--For many years after the adoption of the Constitution, Federal acquisition of State-type legislative jurisdiction occurred only by direct operation of clause 17. The clause was activated through the enactment of State statutes consenting to the acquisition by the Federal Government either of any land, or of specific tracts of land, within the State. In more recent years the Federal Government has in several instances made reservations of jurisdiction over certain areas in connection with the admission of a State into the Union. A third means for transfer of legislative jurisdiction to the Federal Government. Courts and other legal authorities have distinguished at various times between Federal legislative jurisdiction derived, on the one hand, directly from operation of clause 17, and, on the other, form a Federal reservation or a State cession of jurisdiction. In the main, however, the characteristics of a legislative jurisdiction status are the same no matter by which of the three means the Federal Government acquired such status. Differences in these characteristics will be specially pointed out in various succeeding portions of this work.

Governmental power merged in Federal Government.--Whether by operation of clause 17, by reservation of jurisdiction by the United States, or by cession of jurisdiction by

States, in many areas all governmental authority (with recent exceptions which will be noted) has been merged in the Federal Government, with none left in any State. By this means same thousands of areas have become Federal in lands, sometimes called "enclaves," in many respects foreign to the States is which they are situated. In general, not State but Federal law is applicable in an area under the exclusive legislative jurisdiction of the United States, for enforcement not by State but Federal authorities, and in many instances not in State but in Federal courts. Normal authority of a

State over areas within its boundaries, and normal relationships between a State and its inhabitants, are disturbed, disrupted, or eliminated, as to enclaves and their residents.

The State no longer has the authority to enforce its criminal laws in areas under the exclusive jurisdiction of the United States. Privately owned property in such areas is beyond the taxing authority of the State. It has been generally held that residents of such areas are not residents of the State, and hence not only are not subject to the obligations of residents of the State but also are not entitled to any of the benefits and privileges conferred by the State upon its residents. Thus, residents of Federal enclaves usually cannot vote, serve on juries, or run for office. They do not, as a matter of right, have access to State schools, hospitals, mental institutions, or similar establishments. The acquisition of exclusive jurisdiction by the Federal Government render as unavailable to the residents of the affect areas the benefits of the laws and judicial and administrative processes of the State relating to adoption, the probate of wills and administration of estates, divorce, and many other matters. Police, fire-fighting, notarial, coroner, and similar services performed by or under the authority of a State may not be rendered with legal sanction, in the usual case, in a Federal enclave.

EXERCISE OF EXCLUSIVE FEDERAL JURISDICTION: Legislative little exercised.--States do not have authority to legislate for areas under the exclusive legislative jurisdiction of

the United States, but Congress has not legislated for these areas either, except in some minor particulars.

Exercise as to crimes.--With respect to crimes occurring within Federal enclaves the federal Congress has enacted the Assimilative Crimes Act, which adopts for enclaves, as Federal law, the State law which is in effect at the time the crime is committed. The Federal Government also has specifically defined and provided for the punishment of a number of crimes which may occur in Federal enclaves, and in such cases the specific provision, of course, supersedes the Assimilative Crimes Act.

Exercise as to civil matters.--Federal legislation has been enacted authorizing the extension to Federal enclaves of the workmen's compensation and unemployment compensation laws of the States within the boundaries of which the enclaves are located. The Federal Government also has provided that State law shall apply in suits arising out of the death or injury of any person by the neglect or wrongful act of another in an enclave. It has granted to the States the right to impose taxes on motor fuels sold on Government reservations, and sales, use, and income taxes on transactions or uses occurring or services performed on such reservations; it has allowed taxation of leasehold interests in Federal enclaves; and it has retroceded to the States

jurisdiction pertaining to the administration of estates of residents of Veterans' Administration facilities. This is the extent of Federal

legislation enacted to meet the special problems existing on areas under the exclusive legislative jurisdiction of the United States.

RULE OF INTERNATIONAL LAW: Extended by courts to provide civil law.--The vacuum which would exist because of the absence of State law or Federal legislation with respect to civil matters in areas under Federal exclusive legislative jurisdiction has been partially filled by the courts, through extension to these areas of a rule of international law that when one sovereign in effect at the time of the taking which are not inconsistent with the laws or policies of the second continue in effect, as laws of the succeeding sovereign, until changed by that sovereign.

Problems arising under rule.--While application of this rule to Federal enclaves does provide a code of laws for each enclave, the law varies from enclave to enclave, and sometimes in different parts of the same enclave, according to the changes in State law which occurred in the periods between Federal acquisition of legislative jurisdiction over the several enclaves or parts. The variances are multiplied, of course, by the number of States. And Federal failure to keep up to date the laws effective in these enclaves renders such laws increasingly obsolete with passage of time, so that business and other relations of long elsewhere discarded. Further, many former State laws become wholly or partially inoperative immediately upon the transfer of jurisdiction, since the Federal Government does not furnish the machinery, formerly furnished by the State or under State authority, necessary to their operation. The Federal Government makes no provision, by way of example, for executing the former State laws relating to notaries public,

coroners, and law enforcement inspectors concerned with matters relate to public health and safety.

ACTION TO MITIGATE HARDSHIPS INCIDENT TO EXCLUSIVE JURISDICTION: By Federal--State arrangement.--The requirement for access of resident children to school has been met by financial arrangements between the Federal Government and the State and local authorities; as a result, for the moment, at least, no children resident on exclusive jurisdiction areas are being denied a primary and secondary public school education. No provision, however, has been made to enable residents to have access to State institutions of higher leaning on the same basis as State residents.

Federal efforts limited; State efforts restricted.--While the steps taken by the Federal Government have served to eliminate some small number of the problems peculiar to areas of exclusive jurisdiction, Congress has not enacted legislation governing probate of wills, administration of estates, adoption, marriage, divorce, and many other matters which need to be regulated or provided for in a civilized community. Residents of such areas are dependent upon the willingness of the State to make available to them its processes relating to such matters. Where the authority of the State to act in these matters requires jurisdiction over the property involved, or requires that the persons affected be domiciled within the State, the State's proceedings are of doubtful validity. Once a State has, by one means or another, transferred jurisdiction to the United States, it is, of course, powerless to control many of the consequences;

without jurisdiction, it is without the authority to deal with many of the problems, and having transferred jurisdiction to the United States, it cannot unilaterally recapture any of the transferred jurisdiction. The efforts of the State to ameliorate the consequences of exclusive jurisdiction are, therefore, severely restricted.

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By State statute or informal action, and State reservations.--One of the methods adopted by some States to soften the effects of exclusive Federal legislative jurisdiction has consisted of granting various rights and privilege and rendering various services to residents of areas of exclusive jurisdiction, either by statute or by informal action; so, residents of certain enclaves enjoy the right to vote, attend schools, and use the State's judicial processes in probate and divorce matters; they frequently have vital statistics maintained for them and are rendered other services. The second method has consisted of not transferring to the Federal Government all of the State's jurisdiction over the federally owned property, or of reserving the right to exercise, in varying degrees, concurrent jurisdiction with the Federal Government as to the matters specified in a reservation. For example, a State, in ceding jurisdiction to the United States, might reserve exclusive or concurrent jurisdiction as to criminal matters, or more commonly, concurrent jurisdiction to tax private property located within the Federal area.

RESERVATION OF JURISDICTION BY STATES: Development of reservations.--In recent years, such reservations and withholdings have constituted the rule rather than the exception. In large part, this is accounted for by the sharp increase, in the 1930's, in the rate of Federal land acquisition, with a consequent deepening awareness of the practical effects of exclusive Federal jurisdiction. In earlier years, however, serious doubts had been entertained as to whether article I, section 8, clause 17, of the Constitution, permitted the State to make any reservations of jurisdiction, other than the right to serve civil and criminal process n an area, which right was not regarded as in derogation of the exclusive jurisdiction of the United States. Not until, relatively recent years (1885) did the Supreme Court recognize as valid a reservation of jurisdiction in a State cession statute, and not until 1937 did it approve a similar reservation where jurisdiction is transferred by a consent under clause 17, rather than by a cession. It is

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clear that today a State has complete discretion as to the reservations it may wish to include in its cession of jurisdiction to the United States or in its consent to the purchase of land by the United States. The only over-all limitations that the reservation must not be one that will interfere with the performance of Federal functions.

Early requirement, of R.S. 355, for exclusive Federal jurisdiction,--The extent of the acquisition of legislative jurisdiction by the United States was influenced to an extreme degree by the enactment, in 1841, of a Federal statute prohibiting the expenditure of public money for the erection of public works until there had been received from the appropriate State the consent to the

acquisition by the United States of the site upon which the structure was to be placed. The giving of such consent resulted, of course, in the transfer of legislative jurisdiction to the United States by operation of clause 17. Not until 1940 was this statute amended to make Federal acquisition of legislative jurisdiction optional rather than mandatory.

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The intervening 100-year period saw Federal acquisition of exclusive legislative jurisdiction over several thousand areas acquired for Federal purposes, since in the interest of facilitating the carrying on of Federal activities on areas within their boundaries each of the States consented to the acquisition of land by the United States within the State. Areas acquired with such consent continue under the exclusive legislative jurisdiction of the United States, since only with respect to a very few areas has the Federal Government retroceded to a States jurisdiction previously acquired.

Present variety of jurisdictional situations.--Removal of the Federal statutory requirement for acquisition of exclusive legislative jurisdiction has resulted in amendment by many States of their consent and cession statutes so as to reserve to the State the right to exercise various powers and authority. The variety of the reservations in these amended statutes has created an almost infinite number of jurisdiction situations.

JURISDICTION STATUTES DEFINED: Exclusive legislative jurisdiction.--In this part II, as in part I, the term "exclusive legislative jurisdiction" is applied to situations wherein the Federal Government has received, by whatever method, all the authority of the State, with no reservation made to the State except of the right to serve process resulting from activities which occurred off the land involved. This term is applied notwithstanding that the State may exercise certain authority over the land, as may other States over land similarly situated, in consonance with the several Federal statutes which have been mentioned above.

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Concurrent legislative jurisdiction.--The term "concurrent legislative jurisdiction" is applied in those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

Partial legislative jurisdiction.--The term "partial legislative jurisdiction" is applied in those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than the right to serve civil or criminal process in the area (e.g., the right to tax private property).

Proprietorial interest only.--The term "proprietorial interest only" is applied in those instances where the Federal Government has

acquired some right of title to an area in a State but has not obtained any measure of the State's authority over the area. In applying this definition, recognition should be given to the fact that the United States, by virtue of its functions and powers and immunities with respect to areas in which are not possessed by ordinary landholders, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietary (private) capacity.

OTHER FEDERAL RIGHTS OWNED AREAS: To carry out constitutional duties.--The fact that the United States has only a "proprietorial interest" in any particular federally owned area does not mean that agencies of the Federal Government are without power to carry out in that area the functions and duties assigned to them under the Constitution and statutes of the United States. On the contrary, the authority and responsibility vested in the Federal Government by various provisions of the Constitution, such

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as the power to regulate commerce with foreign nations and among the several States (art. I, sec. 8, cl. 3), to establish Post Offices and post roads (art. I, sec. 8 cl. 7), and to provide and maintain a Navy (art. I, sec. 8, cl. 13) are independent of the clause 17 authority, and carry, certainly as supplemented by article I, section 18, of the Constitution, self-sufficient power for their own execution.

To make needful rules, and necessary and proper laws, and effect of Federal supremacy clause.--There is also applicable to all federally owned land the constitutional power (art. IV, sec. 3, cl. 2) given to Congress, completely independent of the existence of any clause 17 authority, "to * * * make all needful Rules and Regulations respecting the Territory or other of Congress (art. I, sec. 8, cl. 18), "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof," is, of course, another important factor in the Federal functions. And any impact of State or local laws upon the exercise of Federal authority under the Constitution is always subject to the limitations of what has bee termed the federal supremacy clause of the Constitution, article VI, clause 2.

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GENERAL BOUNDARIES OF THE WORK: The following pages deal, within the bounds generally outlined above, with the law--the constitutional and statutory provisions, the court decisions, and the written opinions of legal officers, Federal and State--relating to Federal exercise, or non-exercise, of legislative jurisdiction as to areas within the several States. They are not purported to deal with the law cited may, or may not, be applicable. Opinions are those of the authorities by whom they were rendered, and unless otherwise clearly indicated do not necessarily coincide with those of the Committee.

CHAPTER II

ORIGIN AND DEVELOPMENT OF LEGISLATIVE JURISDICTION

ORIGIN OF ARTICLE I, SECTION 8, CLAUSE 17, OF THE CONSTITUTION: Harassment of the Continental Congress.--While the Continental Congress was meeting in Philadelphia on June 20, 1783, soldiers from Lancaster, Pennsylvania, arrived "to obtain a settlement of accounts, which they supposed they had a better chance for at Philadelphia than at Lancaster." On the next day, June 21, 1783:

> The mutinous soldiers presented themselves, drawn up in the street the state-house, where Congress had assembled. The executive council of the state, sitting under the same roof, was called on for the proper interposition. President Dickinson came in [to the hall of Congress], and explained the difficulty, under actual circumstances, of bringing out the militia of the place for the suppression of the mutiny. He thought that, without some outrages on persons or property, the militia could not be relied on. General St. Claire, then in Philadelphia, was sent for, and desired to use his interposition, in order to prevail on the troops to return to the barracks. His report gave no encouragement.
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> * * * * *

> In the mean time, the soldiers remained in their position, without offering any violence, individuals only, occasionally, uttering offensive words, and, wantonly pointing their muskets to the windows of the hall of Congress. No danger from premeditated violence was apprehended, but it was observed that spirituous drink, from the tippling-houses adjoining, began to be liberally served out to the soldiers, and might lead to hasty excesses. None were committed, however, and, about three o'clock, the usual hour, Congress adjourned; the soldiers, though in some instances offering a mock obstruction, permitting the members to pass through their ranks. They soon afterwards retired themselves to the barracks.
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> * * * * *
>
> The [subsequent] conference with the executive [of Pennsylvania] produced nothing but a repetition of doubts concerning the disposition of the militia to act unless some actual outrage were offered to persons or property. It was even doubted whether a repetition of the insult to Congress would be a sufficient provocation.
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> During the deliberations of the executive, and the suspense of the committee, reports from the barracks were in constant vibration. At one moment, the mutineers were penitent and preparing submissions; the next, they were meditating more

violent measures. Sometimes, the bank was their object; then the seizure of the members of Congress, with whom they imagined an indemnity for their offence might be stipulated.

The harassment by the soldiers which began on June 20, 1783, continued through June 24, 1783. On the latter date, the members of Congress abandoned hope that the State authorities would disperse the soldiers, and the Congress removed itself from Philadelphia. General George Washington had learned of the uprising only on the same date at his head-

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quarters at Newburgh, and, reacting promptly and vigorously, had dispatched a large portion of his whole force to suppress this "infamous and outrageous Mutiny" (27 Writings of Washington (George Washington Bicentennial Commission, G.P.O., 1938) 32), but news of his action undoubtedly arrived too late. The Congress then met in Princeton, and thereafter in Trenton, New Jersey, Annapolis, Maryland, and New York City. There was apparently no repetition of the experience which led to Congress' removal from Philadelphia, and apparently at no time during the remaining life of the Confederacy was the safety of the members of Congress similarly threatened or the deliberations of the Congress in any way hampered.

However, the members of the Continental Congress did not lightly dismiss the Philadelphia incident from their minds. On October 7, 1783, the Congress, while meeting in Princeton, New Jersey, adopted the following resolution:

> That buildings for the use of Congress be erected on or near the banks of the Delaware, provided a suitable district can be procured on or near the banks of the said river, for a federal town; and that the right of soil, and an exclusive or such other jurisdiction as Congress may direct, shall be vested in the United States.

Available records fail to disclose what action, if any, was taken to implement this resolution. In view of the absence of a repetition of the experience which gave rise to the resolution, it may be that the feelings of urgency for the acquisition of exclusive jurisdiction diminished.

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Debates in Constitutional Convention concerning clause 17.--Early in the deliberations of the Constitutional Convention, on May 29, 1787, Mr. Charles Pinckney, of South Carolina, submitted a draft of a proposed constitution, which authorized the national legislature to "provide such dockyards and arsenals, and erect such fortifications, as may be necessary for the United States, and to exercise exclusive jurisdiction therein." This proposed constitution authorized, in addition, the establishment of a seat of government for the United States "in which they shall have exclusive jurisdiction." No further proposals concerning exclusive jurisdiction were made in the Constitutional Convention until August 18, 1787.

In the intervening period, however, a variety of considerations were advanced in the Constitutional Convention affecting the

establishment of the seat of the new government, and a number of them were concerned with the problem of assuring the security and integrity of the new government against interference by any of the States. Thus, on July 26, 1787, Mason, of Virginia, urged that some provision be made in the Constitution "against choosing for the seat of the general government the city or place at which the seat of any state government might be fixed," because the establishment of the seat of government in a State capital would tend "to produce disputes concerning jurisdiction" and because the intermixture of the two legislatures would tend to give "a provincial tincture" to the national deliberations. Subsequently, in the course of the debates concerning a proposed provision which, it was suggested, would have permitted the two houses of Congress to meet at places chosen by them from time to time, Madison, on August 11, 1787, urged the desirability of a permanent seat of government on the ground, among others, that "it was more necessary that the government should be in that position from

which it could contemplate with the most equal eye, and sympathize most equally with, every part of the nation."

The genesis of article I, section 8, clause 17, of the Constitution, is to be found in proposals made by Madison and Pinckney on August 18, 1787. For the purpose of having considered by the committee of detail whether a permanent seat of government should be established, Madison proposed that the Congress be authorized:

> To exercise, exclusively, legislative authority at the seat of the general government, and over a district around the same not exceeding square miles, the consent of the legislature of the state or states, comprising the same, being first obtained.
>
> * * * * *
>
> To authorized the executive to procure, and hold, for the use of the United States, landed property, for the erection of forts, magazines, and other necessary buildings.

Pinckney's proposal of the same day, likewise made for the purpose of reference to the committee of detail, authorized Congress:

> To fix, and permanently establish, the seat of government of the United States, in which they shall possess the exclusive right of soil and jurisdiction.

It may be noted that Madison's proposal made no provision for Federal exercise of jurisdiction except at the seat of Government, and Pinckney's new proposal included no reference whatever to areas other than the seat of Government.

On September 5, 1787, the committee of eleven, to whom the proposals of Madison and Pinckney had been referred, proposed that the following power be granted to Congress:

> To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance

> of the legislature, become the seat of government of the United States; and to exercise like authority over all places purchased for the creation of forts, magazines, arsenals, dock-yards, and other needful buildings.

Although neither the convention debates, nor the proposals made by Madison and Pinckney on August 18, 1787, had made any reference to Federal exercise of jurisdiction over areas purchased for forts, etc., the committee presumably included in its deliberations on this subject the related provision contained in the proposed constitution which had been submitted by Pinckney on May 29, 1787, which provided for such exclusive jurisdiction.

The debate concerning the proposal of the committee of eleven was brief, and agreement concerning it was reached quickly, on the day of the submission of the proposal to the Convention. The substance of the debate concerning this provision was reported by Madison as follows:

> So much of the fourth clause as related to the seat of government was agreed to, new. con.
>
> On the residue, to wit, "to exercise like authority over all places purchased for forts, & c."--
>
> MR. GERRY contended that this power might be made use of to enslave any particular state by buying up its territory, and that the strongholds proposed would be a means of awing the state into an undue obedience to the general government.
>
> MR. KING thought himself the provision unnecessary, the power being already involved; but would move to insert, after the word "purchased," the words, "by the consent of the legislature of the state." This would certainly make the power safe.
>
> MR. GOUVERNEUR MORRIS seconded the motion, which was agreed to, nem. con,; as was then the residue of the clause, as amended.

On September 12, 1787, the committee of eleven submitted to the Convention a final draft of the Constitution. The committee had made only minor changes in the clause agreed to by the Convention on September 5, 1787, in matters of style, and article I, section 8, clause 17, was contained in the draft in the form in which it appears in the Constitution today.

Aside from disclosing the relatively little interest manifested by the Convention in that portion of clause 17 which makes provision for securing exclusive legislative jurisdiction over areas within the States, the debates in the Constitutional Convention relating to operation of Federal areas, as reported by Madison, are notable in several other respects. Somewhat surprising is the fact that consideration apparently was not given to the powers embraced in article I, section 8, clause 18, and the supremacy clause in article VI, as a means for securing the integrity and independence of the geographical nerve center of the new government, and, more particularly, of other areas on which the functions of the government would in various aspects be performed. In view of the authority contained in the two last-mentioned provisions, the provision for exclusive jurisdiction appears to represent, to considerable extent, an attempt to resolve by the adoption of a legal concept a problem

stemming primarily from a lack of physical power.

The debates in the Constitutional Convention are also of interest in the light they cast on the purpose of the consent requirement of clause 17. There appears to be no question but that the requirement was added simply to foreclose by the Federal Government of all of the property within that State. Could the Federal Government acquire exclusive jurisdiction over all property purchased by it within a State, without the consent of that State, the latter would have no means of preserving its integrity. Neither in the debates of the Constitu-

tional Convention, as reported by Madison, nor in the context in which the consent requirement was added, is there any suggestion that the consent requirement had the additional object of enabling a State to preserve the civil rights of persons resident in areas over which the Federal Government received legislative jurisdiction. As will be developed more fully below, in the course of the Virginia ratifying conventions and elsewhere, Madison suggested that the consent requirement might be employed by a State to accomplish such objective.

Debates in State ratifying conventions.--Following the conclusion of the work of the Constitutional Convention in Philadelphia, article I, section 8, clause 17, received the attention of a number of State ratifying conventions. The chief public defense of its provisions is to be found in the Federalist, #42, by Madison (Dawson, 1863). In that paper, Madison described the purpose and scope of clause 17 as follows:

> The indispensable necessity of complete authority at the seat of Government, carries its own evidence with it. It is a power exercised by every Legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings be interrupted with impunity; but a dependence of the members of the General Government on the State comprehending the seat of the Government, for protection in the exercise of their duty, might being on the National Councils an imputation of awe or influence, equally dishonorable to the Government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight, as the gradual accumulation of public improvements at the stationary residence of the Government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the Government, as still fur-

> ther to abridge its necessary independence. The extent of this Federal district is sufficiently circumscribed to satisfy every jealousy of an opposite nature. And as it is to be appropriated to this use with the consent of the State ceding it;; as the State will no doubt provide in the compact for the rights and the consent of the citizens inhabiting it; as the inhabitants will find sufficient inducements of interest to become willing parties to the cession; as they will have had their voice in the election

> of the Government, which is to exercise authority over them; as a municipal Legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the Legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole People of the State, in their adoption of the Constitution, every imaginable objection seems to be obviated. The necessity of a like authority over forts, magazines, etc., established by the General Government, is not less evident. The public money expended on such places, and the public property deposited in them, require, that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend, to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated, by requiring the concurrence of the States concerned, in every such establishment.

In both the North Carolina and Virginia ratifying conventions, clause 17 was subjected to severe criticism. The principal criticism levied against it in both conventions was that it was destructive of the civil rights of the residents of the ares subject to its provisions. In the North Carolina convention, James Iredell (subsequently a United States Supreme Court justice, 1790-1799) defended the clause against this criticism,

and at the same time urged the desirability of its inclusion in the Constitution, as follows:

> They are to have exclusive power of legislation--but how? Wherever they may have this district, they must possess it from the authority of the state within which it lies; and that state may stipulate the conditions of the cession. Will not such state take care of the liberties of its own people? What would be the consequence if the seat of the government of the United States, with all the archives of American, was in the power of any one particular state? Would not this be most unsafe and humiliating? Do we not all remember that, in the year 1783, a band of soldiers went and insulted Congress? The sovereignty of the United States was treated with indignity. They applied for protection to the state they resided in, but could obtain none. It is to be hoped that such a disgraceful scene will never happen again; but that, for the future, the national government will be able to protect itself. * * *

In the Virginia convention, Patrick Henry voiced a number of objections to clause 17. Madison undertook to defend it against these objections:

> He [Henry] next objects to the exclusive legislation over the district where the seat of government may be fixed. Would he submit that the representatives of this state should carry on their deliberations under the control of any other of the Union? If any state had the power of legislation over the place where Congress should fix the general government, this would impair the dignity, and hazard the safety, of Congress. If the safety of the Union were under the control of any particular state, would not foreign corruption probably prevail, in such a state, to

induce it to exert its controlling influence over the members of the general govern-

ment? Gentlemen cannot have forgotten the disgraceful insult which Congress received some years ago. When we also reflect that the previous cession of particular states is necessary before Congress can legislate exclusively any where, we must, instead of being alarmed at this part, heartily approve of it.

Patrick Henry specifically raised a question as to the fate of the civil rights of inhabitants of the seat of the government, and further suggested that residents of that area might be the recipients of exclusive emoluments from Congress and might be excused from the burdens imposed on the rest of society. Mason also raised the question of civil rights of the inhabitants, and, in addition, suggested that the seat of government might become a sanctuary for criminals. Madison answered some of these objections as follows:

I did conceive, sir, that the clause under consideration was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask whether there would not be much larger scope for those dangers. I cannot comprehend that the power of legislating over a small district, which cannot exceed ten miles square, and may not be more than one mile, will involve the dangers he apprehends. If there be any knowledge in my mind of the nature of man, I should think that it would be the last thing that would enter into the mind of any man to grant exclusive advantages, in a very circumscribed district, to the prejudice of the community at large. We make suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But, after all, being home this question to ourselves. Is it probable that the members from Georgia, New Hampshire, & c., will concur to sacrifice

the privileges of their friends? I believe that, whatever state may become the seat of the general government, it will become the object of the jealousy and envy of the other states. Let me remark, if not already remarked, that there must be a cession, by particular states, of the district to Congress, and that the states may settle the terms of the cession. The states may make what stipulation they please in it, and, if they apprehend any danger, they may refuse it altogether. How could the government be guarded from the undue influence of particular states, or from insults, without such exclusive power? If it were at the pleasure of a particular state to control the session and deliberations, of Congress, would they be secure from insults, or the influence of such state? If this commonwealth depended, for the freedom of deliberation, on the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to Congress? * * * We must limit our apprehensions to certain degrees of probability. The evils which they urge might result

> from this clause are extremely improbable; nay, almost impossible.

The other objections raised in the Virginia convention to clause 17 were answered by Lee. His remarks have been summarized as follows:

> Mr. Lee strongly expatiated on the impossibility of securing any human institution from possible abuse. He thought the powers conceded in the paper on the table not so liable to be abused as the powers of the state governments. Gentlemen had suggested that the seat of government would become a sanctuary for state villains, and that, in a short time, ten miles square would subjugate a country of eight hundred miles

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> square. This appeared to him a most improbable possibility; nay, he might call it impossibility. Were the place crowded with rogues, he asked if it would be an agreeable place of residence for the members of the general government, who were freely chosen by the people and the state governments. Would the people be so lost to honor and virtue as to select men who would willingly associate with the most abandoned characters? He thought the honorable gentleman's objections against remote possibility of abuse went to prove that government of no sort was eligible, but that a state of nature was preferable to a state of civilization. He apprehended no danger; and thought that persons bound to labor, and felons, could not take refuge in the ten miles square, or other places exclusively governed by Congress, because it would be contrary to the Constitution, and palpable usurpation, to protect them.

In the ratifying conventions, no express consideration, it seems, was given to those provisions of clause 17 permitting the establishment of exclusive legislative jurisdiction over areas within the States. Attention apparently was directed solely to the establishment of exclusive legislative jurisdiction over the seat of government. However, the arguments in support of, and criticisms against, the establishment of exclusive legislative jurisdiction over the seat of government are in nearly all instances equally applicable to the establishment of such jurisdiction over areas within the States. The difference between the two cases is principally one of degree, and in this fact in all probability lies the explanation why areas within the States were not treated as a separate problem in the ratifying conventions. Because of the similarity between the two, the arguments concerning the seat of government are relevant in tracing the historical background of exclusive legislative jurisdiction over areas within the States.

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Federal legislation prior to 1886.--The matter of exclusive legislative jurisdiction received the attention of the first Congress in its first session. It provided that the United States, after the expiration of one year following the enactment of the act, would not defray the expenses of maintaining light-houses, beacons, buoys and public piers unless the respective States in which they were situated

should cede them to the United States, "together with the jurisdiction of the same." The same act also authorized the construction of a lighthouse near the entrance of Chesapeake Bay "when ceded to the United States in the manner aforesaid, as the President of the United States shall direct." The policy of requiring cession of jurisdiction as a condition precedent to the establishment and maintenance of lighthouses was followed by other early Congresses, and it subsequently became a general requirement.

Unlike the legislation relating to the maintenance and acquisition of lighthouses, the legislation of the very early Congresses authorizing the acquisition by the United States of land for other purposes did not contain any express jurisdiction requirement. The only exceptions consist of legislation enacted in 1794, which authorized the establishment of "three or four arsenals," provided that "none of the said arsenals [shall] be erected,until purchases of the land necessary for their accommodation be made with the consent of the legislature of the

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state, in which the same is intended to be erected," and legislation in 1826 authorizing the acquisition of land for purposes of an arsenal. Express jurisdiction requirements were not, however, contained in other early acts of Congress providing for the purchase of land at West Point, New York, for purposes of fortifications and garrisons, the erection of docks, the establishment of Navy hospitals, the exchange of one parcel of property for another for purposes of a fortification, and the establishment of an arsenal at Plattsburg, New York. An examination of the early federal statutes discloses that in various other instances the consent of the State was not made a prerequisite to the acquisition of land for fortifications and a customhouse.

The absence of express jurisdictional requirements in Federal statutes did not necessarily result in the United States acquiring a proprietorial interest only in properties. In numerous instances, apparently, jurisdiction over the acquired properties was ceded by the States even without an express Federal statutory requirement therefor.

In other instances, however, as in the case of the property at Plattsburg, New York, the United States has never acquired any degree of legislative jurisdiction. In at least one instance, a condition imposed in a State cession statute proved fatal to the acquisition by the United States of legislative jurisdiction; thus, in United States v. Hopkins, 26 Fed. Cas. 371, No. 15,387a (C.C.D. Ga., 1830), it was held that a State statute which ceded jurisdiction for "forts or fortifications" did not serve to vest in the United States legislative jurisdiction over an area used for an arsenal.

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In 1828, Congress sought to achieve a uniformity in Federal jurisdiction over areas owned by the United States by authorizing the President to procure the assent of the legislature of and State, within which any purchase of land had been made for the erection of forts, magazines, arsenals, dockyards and other needful buildings without such consent having been obtained, and by authorizing him to obtain exclusive jurisdiction over widely scattered areas throughout the United States. The remarks of Representative Marvin, of New York,

who questioned the practicality of legislative jurisdiction, were summarized as follow:

> MR. MARVIN, of New York, said, that the present discussion which had arisen on the amendment, had, for the first time, brought the general character of the bill under his observation. Indeed, no discussion until now had been had of the merits of the bill; and, while it seemed in its general objects, to meet with almost universal assent, from the few moments his attention had been turned to the subject, he was led to doubt whether the bill was one that should be passed at all. One of the prominent provisions of the bill, made it the duty of the Executive to obtain the assent of the respective States to all grants of land made within them, to the General Government, for the purposes of forts, dockyards, &c. and the like assent to all future purchases for similar objects, with a view to vest in the United States exclusive jurisdiction over the lands so granted. The practice of the Government hitherto had been, in most cases, though not in all, to purchase the right of soil, and to enter into the occupancy for the purpose intended, without also acquiring exclusive jurisdiction, which, in all cases, could be done, where such exclusive powers were deemed important, The

> National Government were exclusively vested with the power to provide for the common defence; and, in the exercise of this power, the right to acquire land, on which to erect fortifications, was not to be questioned. While the National Government held jurisdiction under the Constitution for all legitimate objects, the respective States had also a concurrent jurisdiction. As no inconvenience, except, perhaps, from the exercise of the right of taxation, in a few instances, under the State authorities, had hitherto been experienced from a want of exclusive jurisdiction, he was not, at this moment, prepared to give his sanction to the policy of the bill. Mr. M. said, he could see most clearly, cases might arise, where, for purposes of criminal jurisdiction, a concurrent power on the part of the State might be of vital importance. Your public fortresses may become places of refuge from State authority. Indeed, they may themselves be made the theatres where the most foul and dark deeds may be committed. The situation of your fortifications must, of necessity, be remote. In times of peace, they were often left with, perhaps, no more than a mere agent, to look to the public property remaining in them; thus rendered places too will befitting dark conspiracies and acts of blood. Their remote situation, and almost deserted condition, would retard the arm of the General Government in overtaking the offender, should crimes be committed. While no inconvenience could result from a concurrent jurisdiction on the part of the State and National tribunals, the public peace would seem to be thereby better secured. Mr. M. instanced a case of murder committed in Fort Niagara, some years ago, where after trial and conviction in the State courts, an exception was taken to the proceedings, from an alleged exclusive jurisdiction in the courts of the United States. The question thus raised, was decided, after argument in the Supreme court of the State

of New York, sustaining a concurrent jurisdiction in the State tribunals. Mr. M. regarded the right claimed, and exercised by the State, on that occasion, important. If important then, there were reasons, he thought, why it should not be less so now.

The legislation was nevertheless enacted, and a provision thereof has existed as section 1838 of the Revised Statutes of the United States. Following the enactment of this statute, Congress did not take any decisive action with respect to legislative jurisdiction until September 11, 1841, when it passed a joint resolution, which subsequently became R.S. 355, requiring consent by a State to Federal acquisition of land (and therefore a cession of jurisdiction by the State by operation of article I, section 8, clause 17, of the Constitution), as a condition precedent to the expenditure of money by the Federal Government for the erection of structures on the land. As in the case of R. S. 1838, the Congressional debates do not indicate the considerations prompting the enactment of R.S. 355. There had, however, been a controversy between the United States and the State of New York concerning title to (not jurisdiction over) a tract of land on Staten Island, upon which fortifications had been maintained at Federal expense, and the same Congress which enacted the joint resolution of 1841 refused to appropriate funds for the repair of these fortifications until the question of title had been settled. The 1841 joint resolution also required the Attorney General to approve the validity of title before expenditure of public funds for building on land. By these two means the Congress pre-

sumably sought to avoid a repetition of the Staten Island incident, and to avoid all conflict with States over title to land. While these suggested considerations underlying the enactment of the 1841 joint resolution are based entirely upon historical circumstances surrounding its adoption, the available records of not offer any other explanation, and there has not been discovered any means for ascertaining definitely whether Congress was aware, in enacting the joint resolution, that it was thereby requiring States to transfer jurisdiction to the Federal Government over most areas thereafter acquired by it. Debate had in the Senate in 1850 (Cong. Globe, 31st Cong., 1st sess. 70), indicates that as of that time it was not understood that the joint resolution required such transfer.

Thirty years after the adoption of the 1841 joint resolution, the effects of exclusive legislative jurisdiction on the civil rights of residents of areas subject to such jurisdiction were forcibly brought to the attention of Congress. In 1869, the Supreme Court of Ohio, in Sinks v. Reese, 19 Ohio St. 309, held that inmates of a soldiers' home located in an area of exclusive legislative jurisdiction in that State were not entitled to vote in State and local elections, notwithstanding the reservation of such rights in the Ohio statute transferring legislative jurisdiction to the United States. As a consequence of this decision, Congress retroceded jurisdiction over the soldiers' home to the State of Ohio. The enactment of this retrocession statute was preceded by extensive debates in the Senate. In the course of the debates, questions were raised as to the constitutional authority of Congress to retrocede jurisdiction which had been vested in the United States pursuant to article I, section 8,

clause 17, of the Constitution, and it was also suggested that exclusive legislative jurisdiction was essential to enforce discipline on a military reservation. The

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constitutional objections to retrocession of jurisdiction did not prevail, and, whatever the views of the senators may have been at that time as to the necessity for Federal exercise of legislative jurisdiction over military areas, the views expressed by Senator Morton, of Indiana, prevailed:

> Mr. President, there might be a reason for a more extended jurisdiction in the case of an arsenal or a fort than i the case of an asylum. I admit that there is no necessity at all for exclusive jurisdiction or an extended jurisdiction in the case of an asylum. Now, take the case of a fort. Congress, of course, would require the jurisdiction necessary to punish a soldier for drunkenness, which is the case put be the Senator, or to punish any violation of military law or discipline; but is it necessary that this Government should have jurisdiction if two of the hands engaged in plowing or gardening should get into a fight? Such cases do not come within the reasoning of the rule at all. It so happens, however, that exclusive jurisdiction has been given in those cases, but I contend that it has always been an inconvenience and was unnecessary. * * *

In addition to providing for, and subsequently requiring, the acquisition of legislative jurisdiction, the early Congresses enacted legislation designed to meet, at least to an extent, some of the problems resulting from the acquisition of legislative jurisdiction. In attempting to cope with some of these problems, the efforts of some of the States antedated legislation passed by Congress for the same purposes. When granting consent pursuant to article I, section 8, clause 17, with respect to lighthouses and lighthouse sites some of the States from earliest times reserved the right to serve criminal and civil

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process in the affected areas. Recognizing the fact of the existence of these reservations, together with the adverse consequences which would result from an inability on the part of the States to serve process in areas over which jurisdiction had passed to the Federal Government, Congress in 1795 enacted a statute providing that such reservations by a State would be deemed to be within a Federal statutory requirement that legislative jurisdiction be acquired by the United States, and, in addition, Congress provided that regardless of whether a State had reserved the right to serve process in places where lighthouses, beacons, buoys or public piers had been or were authorized to be erected or fixed as to which the State had ceded legislative jurisdiction to the United States, it would nevertheless have the right to do so.

While the right thus reserved to the States to serve criminal and civil process served to prevent exclusive legislative jurisdiction areas from becoming a haven for persons charged with offenses under State law, R.S. 4662 did not serve to enlarge the jurisdiction of the

State to enforce its criminal laws within

such areas. Only Congress could define offenses in such areas and provide for their punishment.

At an early date, Congress initiated a series of legislative enactments to cope with the problem of crimes within Federal areas. In 1790, it provided for the punishment of murder, larceny and certain other crimes, and complete criminal sanctions were provided for by the enactment of the first Assimilative Crimes Act in 1825. This latter enactment adopted as Federal law for areas subject to exclusive legislative jurisdiction the criminal laws of the State in which a given area was located.

While making provision for punishment for criminal offenses in areas subject to exclusive legislative jurisdiction, and authorizing the States to serve criminal and civil process in certain of such areas, Congress did not give corresponding attention to civil matters arising in the areas. Although Congress retroceded jurisdiction in order to restore the voting rights of residents of the soldiers' home in Ohio, no other steps were taken to preserve generally the civil rights of residents of areas of exclusive legislative jurisdiction. The confident predictions in the State ratifying conventions that civil rights would be preserved by means of appropriate conditions in State consent statutes did not materialize. Only in the case of the cession of jurisdiction to the United States for the establishment of the District of Columbia was even a gesture made in a State consent statute towards preserving the rights of its citizens. Thus, in its act of cession, Virginia included the following proviso:

> And provided also, That the jurisdiction of the laws of this commonwealth over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress,

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> having accepted the said cession, shall, by law, provide for the government thereof, under their jurisdiction, in the manner provided by the article of the Constitution before recited [article I, section 8].

In 1790, Congress accepted this cession, and in its acceptance included the following corresponding proviso:

> * * * Provided nevertheless, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.

The constitutionality of these provisos in the Virginia cession statute and the Federal acceptance statute was sustained in Young v. Bank of Alexandria, 4 Cranch 384 (1808).

Early court decisions. The decisions of the courts prior to 1885 relating to matters of exclusive legislative jurisdiction are relatively few and of varying importance.

It was held at an early date that the term "exclusive legislation," as it appears in article I, section 8, clause 17, of the Constitution, is synonymous with "exclusive jurisdiction." United States v. Bevans, 3 Wheat. 336, 388 (1818); United States v. Cornell, 25 Fed. Cas. 646, No. 14,867 (C.C.D.R.I., 1819), "the national and municipal powers of government, of every description, are united in the government of the Union." Pollard v. Hagan, 3 How. 212, 223 (1845). Reservation by a State of the right to serve criminal and civil process in a Federal area is, it was held, in no way inconsistent with the exercise by the United States of exclusive jurisdiction over the area. United States v. Travers, 28 Fed. Cas. 204, No. 16,537 (C.C.D. Mass., 1814); United States v. Davis, 25 Fed. Cas.

781, No. 14,930 (C.C.D. Mass. 1829); United States v. Cornell, supra; United States v. Knapp, 26 Fed. Cas. 792, No. 15,538 (S.D.N.Y., 1849).

Justice Story, in United States v. Cornell, supra, expressed doubts, however, as to "whether congress are by the terms of the constitution, at liberty to purchase lands for forts, dock-yards, etc., with the consent of a State Legislature, where such consent is so qualified that it will not justify the 'exclusive legislation' of congress there." This view has not prevailed. In United States v. Hopkins, 26 Fed. Cas. 371, No. 15,387a (C.C.D. Ga., 1830), it was, on the other hand, held that a State may limit its consent with the condition that the area in question be used for fortifications; if used as an arsenal, the United States would not have exclusive jurisdiction.

In considering the application of the Assimilative Crimes Act of 1825, the United States Supreme Court held that it related only to the criminal laws of the State which were in effect at the time of its enactment and not to criminal laws subsequently enacted by the State. United States v. Paul, 6 Pet, 141 (1832). In United States v. Wright, 28 Fed. Cas. 791, No. 16,774 (D. Mass., 1871), it was held that the Assimilative Crimes Act adopted not only the statutory criminal laws of the State but also the common law of the State as to criminal offenses.

The power of exclusive legislation, it was said by the United States Supreme Court in an early case, is not limited to the exercise of powers by the Federal Government in the specific area acquired with the consent of the State, but includes incidental powers necessary to the complete and effectual execution of the power of exclusive jurisdiction; thus, the United States may punish a person, not resident o the Federal area, for concealment of his knowledge concerning a felony committed within the Federal area. Cohens v. Virginia, 6 Wheat. 264, 426-429 (1821).

Article I, section 8, clause 17, it was held at an early date, does not extend to places rented by the United States. United

States v. Tierney, 28 Fed. Cas. 159, No. 16,517 (C.C.S.D. Ohio, 1864). The consent specified therein must be given by the State legislature, not by a constitutional convention, it was held in an early opinion of the United States Attorney General. 12 Ops. A. G. 428 (1868). But, it will be seen, it was later decided that the United States may

acquire exclusive legislative jurisdiction by means other than under clause 17. In Ex parte Tatem, 23 Fed. Cas. 708, No. 13,759 (E.D. Va., 1877), it was held that the term "navy yard," as it appeared in a Virginia cession statute, "meant not merely the land on which the government does work connected with ships of the navy, but the waters contiguous necessary to float the vessels of the navy while at the nave yard." The consent provided for by article I, section 8, clause 17, of the Constitution, may be given either before or after the purchase of land by the United States. Ex parte Hebard, 11 Fed. Cas. 1010, No. 6312 (C.C.D. Kan., 1877). The United States may, if it so choses, purchase land within a State without the latter's consent, but, if it does so, it does not have any legislative jurisdiction over the areas purchased. United States v. Stahl, 27 Fed. Cas. 1288, No. 16,373 (C.C.D. Kan., 1868).

In an early New York case, the court expressed the view that State jurisdiction over an area purchased by the United States with the consent of the State continues until such time as the United States undertakes to exercise jurisdiction. People v. Lent, 2 Wheel. 548 (N.Y., 1819). This view has not prevailed. In a State case frequently cited connection with matters relating to the civil rights of residents of areas of exclusive legislature jurisdiction, the Massachusetts Supreme Court, in Commonwealth v. Clary, 8 Mass. 72 (1811), said (p. 77):

> An objection occurred to the minds of some members of the Court, that if the laws of the commonwealth have no force within this territory, the inhabitants thereof cannot exercise any civil or political privileges. * * *

> We are agreed that such consequence necessarily follows; and we think that no hardship is thereby imposed on those inhabitants; because they are not interested in any elections made within the state, or held to pay any taxes imposed by its authority, nor bound by any of its laws.--And it might be very inconvenient to the United States to have their laborers, artificers, officers, and other persons employed in their service, subjected to the services required by the commonwealth of the inhabitants of the several towns.

In Opinion of the Justices, 1 Metc. 580 (Mass., 1841), the Supreme Court of Massachusetts in essence restated this view. Thus, although the fears expressed in the Virginia and North Carolina ratifying conventions as to the effects of legislative jurisdiction on the civil rights of inhabitants of areas subject to such jurisdiction were completely borne out, these effects were at the same time interpreted as distinct advantages for the parties concerned.

CHAPTER III

ACQUISITION OF LEGISLATIVE JURISDICTION

THREE METHODS FOR FEDERAL ACQUISITION OF JURISDICTION: Constitutional consent.--The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction--by State consent under article I, section 8, clause 17. The debates in the Constitutional Convention and State ratifying conventions leave little doubt that both the opponents and proponents of Federal exercise of exclusive legislature jurisdiction over the seat of government were of the view that a constitutional provision such as clause 17 was essential if the Federal government was to have such jurisdiction. At no time was it suggested that such a provision was unessential to secure exclusive legislative jurisdiction to the Federal Government over the seat of government. While, as has been indicated in the preceding chapter, little attention was given in the course of the debates to Federal exercise of exclusive legislative jurisdiction over areas other than the seat of government, it is reasonable to assume that it was the general view that a special constitution provision was essential to enable the United States to acquire exclusive legislative jurisdiction over any area. Hence,the proponents of exclusive legislative jurisdiction over the seat of government and over federally owned areas within the States defended the inclusion in the Constitution of a provision such as article I, section 8, clause 17. And in United States v. Railroad Bridge Co., 27 Fed. Cas. 686, 693, No. 16,114 (C.C.N.D. Ill., 1855), Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued no transfer of jurisdiction can take place.

State cession.--However, in Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885), the United States Supreme Court sustained the validity of an act of Kansas ceding to the United States legislative jurisdiction over the Fort Leavenworth military reservation, but reserving to itself the right to serve criminal and civil process in the reservation and the right to tax railroad, bridge, and other corporations, and their franchises and property on the reservation. In the course of its opinion sustaining the cession of legislative jurisdiction , the Supreme Court said (p. 540):

> We are here net with the objection that the Legislature of a State has no power to cede away her jurisdiction and legislative power over any portion of her territory, except as such cession follows under the Constitution from her consent to a purchase by the United States for some one of the purposes mentioned. If this were so, it would not aid the railroad company; the jurisdiction of the State would then remain as it previously existed. But aside from this consideration, it is undoubtedly

> true that the State, whether represented by her Legislature, or through a convention specially called for that purpose, is incompetent to cede her political jurisdiction and legislative authority over any part of her territory to a foreign country, without the concurrence of the general government. The jurisdiction of the United States extends over all the territory within the States, and therefore, their authority must be obtained, as well as that of the State within which the territory is situated, before any cession of sovereignty or political jurisdiction can be made to a foreign country. * * * In their relation to the general government, the States of the Union stand in a very different position from that which they hold to foreign governments. Though the jurisdiction and authority of the general government are essentially different form those of the State, they are not those of a different country; and the two, the State

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> and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interests of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals, and other buildings for public uses are constructed within the States. As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the States as would defeat or impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the Legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States.

Had the doctrine thus announced in Fort Leavenworth R.R. v. Lowe, supra, been known at the time of the Constitutional Convention, it is not improbable that article I, section 8, clause 17, at least insofar as it applies to areas other than the seat of government, would not have been adopted. Cession as a method for transfer of jurisdiction by a State to the United States is now well established, and quite possibly has been the method of transfer in the majority of instances in which the Federal

Federal reservation.--In Fort Leavenworth R.R. v. Lowe, supra, the Supreme Court approved second method not specified in the Constitution of securing legislative jurisdiction in

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the United States. Although the matter was not in issue in the case, the Supreme Court said (p. 526):

> The land constituting the Reservation was part of the territory acquired in 1803 by cession from France, and until the formation of the State of Kansas, and her admission into the Union, the United States possessed the rights of a proprietor, and had

> political dominion and sovereignty over it. For many years before that admission it had been reserved from sale by the proper authorities of the United States for military purposes, and occupied by them as a military post. The jurisdiction of the United States over it during this time was necessarily paramount. But in 1861 Kansas was admitted into the Union upon an equal footing with the original States, that is, with the same rights of political dominion and sovereignty, subject like them only to the Constitution of the United States. Congress might undoubtedly, upon such admission, have stipulated for retention of the political authority, dominion and legislative power of the United States over the Reservation, so long as it should be used for military purposes by the government; that is, it could have excepted the place from the jurisdiction of Kansas, as one needed for the uses of the general government. But from some cause, inadvertence perhaps, or over-confidence that a recession of such jurisdiction could be had whenever desired, no such stipulation or exception was made. * * * [Emphasis added.]

Almost the same language was used by the Supreme Court of Kansas in Clay v. State, 4 Kan. 49 (1866), and another suggestion of judicial recognition of this doctrine is to be found in an earlier case in the Supreme Court of the United States, Langford v. Monteith, 102 U.S. 145 (1880), in which it was held that when an act of congress admitting a State into the Union provides, in accordance with a treaty, that the lands of

an Indian tribe shall not be a part of such State or Territory, the new State government has no jurisdiction over them. The enabling acts governing the admission of several of the States provided that exclusive jurisdiction over certain areas was to be reserved to the United States. In view of these development, an earlier opinion of the United States Attorney General indicating that a State legislature, as distinguished from a State constitutional convention, had to give the consent to transfer jurisdiction specified in the Federal Constitution (12 Ops. A.G. (1868)), would seem inapplicable to a Federal reservation of jurisdiction.

Since Congress has the power to create States out of territories and to prescribe the boundaries of the new States, the retention of exclusive legislative jurisdiction over a federally owned area within the State is admitted into the Union would not appear to pose any serious constitutional difficulties.

No federal legislative jurisdiction without consent, cession, or reservation.--It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the State, subject to non-interference by the State with Federal functions, and subject to the free exercise by the Federal Government of rights

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with respect to the use, protection, and disposition of its property.

NECESSITY OF STATE ASSENT TO TRANSFER OF JURISDICTION TO FEDERAL GOVERNMENT: Constitutional consent.--The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State. Article I, section 8, clause 17, of the Constitution, provides that legislative jurisdiction may be transferred pursuant to its terms only with the consent of the legislature of the State in which is located the area subject to the jurisdictional transfer. As was indicated in chapter II, the consent requirement of article I, section 8, clause 17, was

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intended by the framers of the Constitution to preserve the States' jurisdictional integrity against Federal encroachment.

State cession or Federal reservation.--The transfer of legislative jurisdiction pursuant to either of the two means not spelled out in the Constitution likewise requires the assent of the State in which is located the area subject to the jurisdictional transfer. Where legislative jurisdiction is transferred pursuant to a State cession statute, the State has quite clearly assented to the transfer of legislative jurisdiction to the Federal Government, since the enactment of a State cession statute is a voluntary act on the part of the legislature of the State.

The second method not spelled out in the Constitution of vesting legislative jurisdiction in the Federal Government, namely, the reservation of legislative jurisdiction by the Federal Government at the time statehood is granted to a Territory, does not involve a transfer of legislative jurisdiction to the Federal Government by a State, since the latter never had jurisdiction over the area with respect to which legislative jurisdiction is reserved. While, under the second method of vesting legislative jurisdiction in the Federal Government, the latter may reserved such jurisdiction without inquiring as to the wishes or desires of the people of the Territory to which statehood has been granted, nevertheless, the people of the Territory involved have approved, in at least a technical sense, such reservation. Thus, the reservation of legislative jurisdiction constitutes, in the normal case, one of the terms and conditions for granting statehood, and only if all of the terms and conditions are approved by a majority of the Territorial legislature, is statehood granted.

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NECESSITY OF FEDERAL ASSENT: Express consent required by R. S. 355.--Acquiescence, or acceptance, by the Federal Government, as well as by the State, is essential to the transfer of legislative jurisdiction to the Federal Government. When legislative jurisdiction is reserved by the Federal Government at the time statehood is granted to a Territory, it is, of course, obvious that the possession of legislative jurisdiction meets with the approval of the Federal Government. When legislative jurisdiction is to be transferred by a State to the Federal Government either pursuant to article I, section 8, clause 17, of the Constitution, or by means of

a State cession statute, the necessity of Federal assent to such transfer of legislative jurisdiction has been firmly established by the enactment of the February 1, 1940, amendment to R.S. 355. While this amendment in terms specifies requirement for formal Federal acceptance prior to the transfer of exclusive or partial legislative jurisdiction, it also applies to the transfer of concurrent jurisdiction. The United States Supreme Court, in Adams v. United States, 319 U.S. 312 (1943), in the cause of its opinion said (pp. 314-315):

> Both the Judge Advocate General of the Army and the Solicitor of the Department of Agriculture have con-

> strued the 1940 Act as requiring that notice of acceptance be filed if the government is to obtain concurrent jurisdiction. The Department of Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding, and now advises us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the Act. These agencies cooperated in developing the Act, and their views are entitled to great weight in its interpretation. * * * Besides, we can think of no other rational meaning for the phrase "jurisdiction, exclusive or partial" than that which the administrative construction gives it.
> Since the government had not accepted jurisdiction in the manner required by the Act, the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken.

Former presumption of Federal acquiescence in absence of dissent.--Even before the enactment of the 1940 amendment to R.S. 355, it was clear that a State could not transfer, either pursuant to article I, section 8, clause 17, of the Constitution, or by means of a cession statute, legislative jurisdiction to the Federal Government without the latter's consent. Prior to the 1940 amendment to R.S. 355, however, it was not essential that the consent of the Federal Government be expressed formally or in accordance with any prescribed procedure. Instead, it was presumed that the Federal Government accepted the benefits of a State enactment providing for the transfer of legislative jurisdiction. As discussed more fully below, this presumption of acceptance was to the effect that once a State

legislatively indicated a willingness to transfer exclusive jurisdiction such jurisdiction passed automatically to the Federal Government without any action having to be taken by the United States. However, the presumption would not operate where Federal action was taken demonstrating dissent from the acceptance of proffered jurisdiction.

Presumption in transfers by cession.--In Port Leavenworth R.R.

v. Lowe, supra, in which a transfer of legislative jurisdiction by means of a State cession statute was approved for the first time, the court said (p. 528) that although the Federal Government had not in that case requested a cession of jurisdiction, nevertheless, "as it conferred a benefit, the acceptance of the act is to be presumed in the absence of any dissent on their part." See also United States v. Johnston, 58 F.Supp. 208 aff'd., 146 F.2d 268 (C.A. 9, 1944), cert. den., 324 U.S. 876; 38 Ops. A. G. 341 (1935). A similar view has been expressed by a number of courts to transfers of jurisdiction by cession. In some instances, however, the courts have indicated the existence of affirmative grounds supporting Federal acceptance of such transfers. In Yellowstone Park Transp. Co. v. Gallatin County, 31 F. 2d 644 (C.A. 9, 1929), cert. den., 280 U.S. 555, it was stated that acceptance by the United

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States of a cession of jurisdiction by a State over a national park area within the State may be implied from acts of Congress providing for exclusive jurisdiction in national parks. See also Columbia River Packers' Ass'n v. United States, 29 F. 2d 91 (C.A. 9, 1928); United States v. Unzeuta, 281 U.S. 138 (1930).

Presumption in transfers by constitution consent.--Until recent years, it was not clear but that the consent granted by a State pursuant to article I, section 8, clause 17, of the Constitution, would under all circumstances serve to transfer legislative jurisdiction to the Federal Government where the latter had "purchased" the area and was using it for one of the purposes enumerated in clause 17. In United States v. Cornell, 25 Fed. Cas. 646, No. 14,867 (C.C.D.R.I., 1819), Justice Story expressed the view that clause 17. In the course of his opinion in that case, Justice Story said (p. 648):

> The constitution of the United States declares that congress shall have power to exercise "exclusive legislation" in all "cases whatsoever" over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings. When therefore a purchase of land for any of these purposes is made by the national government, and the state legislature has given its consent to the purchase, the land so purchased by the very terms of the constitution ipso facto falls within the exclusive legislation of congress, and the state jurisdiction is completely ousted. * * * [Italics added.]

As late as 1930, it was stated in Surplus Trading Co. v. Cook, 281 U.S. 647, that (p. 652):

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> It long been settled that where lands for such a purpose [one of those mentioned i clause 17] are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction. [Italics

added.]

The italicize portions of the quoted excepts suggest that article I, section 8, clause 17, of the Constitution, may be self-executing where the conditions specified in that clause for the transfer of jurisdiction have been satisfied.

In Mason Co. v. Tax Comm'n, 302 U.S. 186 (1937), however, the Supreme Court clearly extended the acceptance doctrine, first applied to transfers of legislative jurisdiction by State cession statutes in Fort Leavenworth R.R. v. Lowe, supra, to transfers pursuant to article I, section 8, clause 17, of the Constitution. The court said (p. 207):

> Even if it were assumed that the state statute should be construed to apply to the federal acquisitions here involved, we should still be met by the contention of the Government that it was not compelled to accept, and has not accepted, a transfer of exclusive jurisdiction. As such a transfer rests upon a grant by the State, through consent or cession, it follows, in accordance with familiar principles applicable to grants, that the grant may be accepted or declined. Acceptance may be presumed in the absence of evidence of a contrary intent, but we know of no constitutional principle which com-

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indicated that transfers of legislative jurisdiction between the Federal Government and a State are matters of arrangement between the two governments. Although in that case the United States Supreme Court did not consider the question of whether State consent is essential to a State cession of legislative jurisdiction would, if applied to Federal retrocession to the State, lead to the conclusion that the latter's consent is essential in order for the retrocession to be effective. The presumption of consent, suggested in the Fort Leavenworth case, would likewise appear to apply to a State to which the Federal Government has retroceded jurisdiction.

While the reasoning of the Fort leavenworth decision casts substantial doubt on the soundness of the view expressed in Renner v. Bennett, supra, it should be noted that the Oklahoma Supreme Court, in two cases, adopted the conclusions reached by the Ohio Supreme Court. In the later of the two Oklahoma cases, McDonnell & Murphy v. Lunday, 191 Okla. 611, 132 P. 2d 322 (1942), the court, in its syllabus to its opinion, stated that consent of the State is not essential to a retrocession of legislative jurisdiction by the Federal Government. The matter was not discussed in the opinion, however, and the similarity in the wording of the court's syllabus

with that of the syllabus to the Ohio court's opinion suggests that the Oklahoma court merely accepted the Ohio court's conclusion without any extended consideration of the matter. In the earlier of the two cases, which were decided in the same year, the Oklahoma Supreme Court also stated that the effectiveness of Federal retrocession of legislative jurisdiction was not dependent upon the acceptance of the State. In that case, Ottinger Bros. v. Clark, 191 Okla. 488, 131 P.2d 94 (1942), the court said (p. 96 of 131 P.2d):

> If an acceptance was necessary, then it would have been equally necessary that the Congress of the United States accept the act of the legislature of 1913 ceding Jurisdic-

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> tion to the United States. That was never done. But as shown in Fort Leavenworth R. Co. v. Lowe, supra, and St. Louis-San Francisco R. Company v. Saterfield, supra, said act was effective without any acceptance by Congress. The Act of Congress of 1936, supra, Therefore became effective immediately after its final passage.

The Oklahoma court's reliance on the Fort Leavenworth decision suggests that its statement that acceptance by the State is not necessary means that there need not be any express acceptance. As was indicated above, the United States Supreme Court in Fort Leavenworth R. R. v. Lowe, supra, stated that there was a presumption of acceptance; it clearly indicated, however, that while it might not be necessary to have an express acceptance, nevertheless, the Federal Government could reject a State's offer of legislative jurisdiction.

While the decision of the Ohio court in Renner v. Bennett, supra, provides some authority for the proposition that a Federal retrocession of legislative jurisdiction is effective irrespective of the State's wishes in the matter, the later decision of the United States Supreme Court in Fort Leavenworth R. R. v. Lowe, supra, appears to support the contrary conclusion; for if, as the United States Supreme Court there indicated, transfers of legislative jurisdiction other than under clause 17 are matters of arrangement between the Federal Government and a State, and if the former may reject a State's offer of legislative jurisdiction, the same reasoning would support the conclusion that a State might likewise reject the Federal Government's offer of a retrocession of legislative jurisdiction. The Oklahoma Supreme Court's decisions do not, for the reasons indicated above, appear to be reliable authority for a contrary conclusion. The reasoning in the Fort Leavenworth R. R. case further suggests, however, that in the absence of a rejection the State's acceptance of the retrocession would be presumed.

Exception.--A possible exception to the rule that a State

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may reject a retrocession of legislative jurisdiction may consist of cases in which, as is indicated below, changed circumstances no longer permit the Federal Government to exercise legislative jurisdiction, as for example, where the Federal Government has disposed of the property.

DEVELOPMENT OF RESERVATIONS IN CONSENT AND SESSION STATUTES: Former Federal requirement (R.S. 355) for exclusive jurisdiction.-- Under the act of September 11, 1841 (and subsequently under section 355 of the Revised Statutes of the United States, prior to its amendment by the act of February 1, 1940), the expenditure of public money for the erection of public buildings on any site or land purchased y the United States was prohibited until the State had consented to the acquisition by the United States of the site upon which the structure was to be erected. An unqualified State consent, it has been seen, transfers exclusive legislative jurisdiction to the United States. But State statutes often contained conditions or reservations which resulted in a qualified consent inconsistent with the former requirements of R. S. 355. In construing State statutes during the 1841-1940 period, the Attorneys General of the United States was essential in order to meet the requirements of R. S. 355. Attorneys General expressed differing views, however, as to what constitutes such a consent.

In at least two opinions, the Attorney General held that State consent given subject to the condition that the State retain concurrent jurisdiction with the United States granted

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the requisite consent of the State to a proposed purchase. Also, the Attorney General in other opinions held that, if an act of a State legislature amounted to a "consent," then any attempted exceptions, reservations or qualifications in the act were void, since, consent being given by the legislature, the Constitution vested exclusive jurisdiction over the place, beyond the reach of both Congress and the State legislature.

The view was also expressed, on the other hand, that State statutes granting the "right of exclusive legislation and concurrent jurisdiction" failed to transfer the requisite jurisdiction. And statutes consenting to the purchase of land by the United States which provided that the State should retain concurrent jurisdiction for he trial and punishment of offenses against the laws of the State did not satisfy the requirements of section 355 of the Revised Statutes. States statutes consenting to the purchase of lands with reservation of (1) the right to administer criminal laws on lands acquired by the United States for Federal building sites, (2) the right to punish offenses against State laws committed on sites for United States buildings or (3) civil and criminal jurisdiction over persons in territory ceded to the United States for Federal buildings were found not compatible with the requirements of R. S. 355.

In addition, the Attorney General expressed the view that a State statute ceding jurisdiction to the United States was insufficient to meet the requirements of R. S. 355 because express reservations therein imposing State taxation, labor, safety and

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health laws are inconsistent with exclusive jurisdiction; and statutes expressing qualified consent to acquisitions of land by the United States, it was held by the Attorney General, did not meet the requirements of R.S. 355.

Therefore, it may well be said that, until the 1940 amendment to R. S. 355 was enacted, it was the view of Attorneys General of the

United States that cessions by a State had to be free from conditions or reservations inconsistent with Federal exercise of exclusive legislative jurisdiction.

This view is compatible with an opinion of the Attorney General of Illinois, who ruled that under section 355 of the Revised Statutes a State in ceding land to the United States with a transfer of exclusive jurisdiction may only reserve the right to serve criminal and fugitives from justice who have committed crimes and fled to such ceded territory to the same extent as might be done if the criminal or fugitive had fled to another part of the State.

Earlier theory that no reservations by State possible.--It was at one time thought that article I, section 8, clause 17, did not permit the reservation by a State of any jurisdiction over an area falling within the purview of that clause except the right to serve criminal and civil process. This, as was indicated in Chapter II, in 1819, Justice Story, in United States v. Cornell, supra, expressed doubts as to "whether congress are by the terms of the constitution, at liberty to purchase lands for forts, dockyards, &c., with the consent of a state legislature, where such consent is so qualified that it will not justify the 'exclusive jurisdiction,' of congress there,"

In support of Justice Story's view, it may be noted that clause 17 does not, by its terms, suggest he possibility of concurrent

or partial jurisdiction. Moreover, the considerations cited by Madison and others in support of clause 17 suggest that the framers of the Constitution sought to provide a method of enabling the Federal Government to obtain complete and sole jurisdiction over certain areas within the States. Whatever the merits of Justice Story's suggestion may be, however, it is clear that his views do not represent the law today.

State authority to make reservations in cession statutes recognized.--The principle that Federal legislative jurisdiction over an area within a State might be concurrent or partial, as well as exclusive, was not judicially established until 1885, and it was approved by the Supreme Court in a case involving the acquisition of a degree of legislative jurisdiction less than exclusive pursuant to a State cession statute instead of under article I, section 8, clause 17, of the Constitution. In that year, the Supreme Court, in Fort Leavenworth R.R. v. Lowe, 114 U.S. 525, said (p. 539):

> As already stated, the land constituting the Fort Leavenworth military Reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a State; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the State since her admission into the Union. It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex not inconsistent with the free and effective use of the fort as a military post..

In the Fort Leavenworth R.R. case the State of Kansas had reserved the right not only to serve criminal and civil process

but also the right to tax railroad, bridge, and other corporations, and their franchises and property in the military reservation. As a result of this reservation, the Federal Government was granted only partial legislative jurisdiction, and such limited legislative jurisdiction, provided for by a State cession statute, was held to be valid. This view has prevailed since 1885, but not until 1937 did the Supreme Court adopt a similar view as to transfers of legislative jurisdiction pursuant to article I, section 8, clause 17, of the Constitution.

In a case decided after the Fort Leavenworth R. R. case, Crook, Horner & Co. v. Old Point Comfort Hotel Co., 54 Fed. 604 (C.C.E.D.Va., 1893), the court implied the same doubts that had been expressed in the Cornell case concerning the inability of the Federal Government to acquire through a State consent statute less than exclusive jurisdiction provided for in clause 17. Again, the same view appears to have been expressed by the Supreme Court in United States v. Unzenta, 281 U.S. 138 (1930), in which it was said (p. 142):

> When the United States acquires title to lands, which are purchased by the consent of the legislature of the State within which they are situated "for the erection of forts, magazines, arsenals, dockyards and other needful buildings," (Const. Art. I, sec. 8) the Federal jurisdiction is exclusive of all State authority. With reference to land otherwise acquired, this Court said in Ft. Leavenworth Railroad Company v. Lowe, 114 U.S. 525, 539, 541, that a different rule applies, that is, that the land and the buildings erected thereon for the uses of the national government will be free from any such interference and jurisdiction of the State as would impair their effective use for the purposes for which the prop-

> perty was acquired. When, in such cases, a State cedes jurisdiction to the United States, the State may impose conditions which are not inconsistent with the carrying out of the purpose of the acquisition. * * *

A distinction was thus drawn, insofar as the reservation by the State of legislative jurisdiction is concerned, between transfers of legislative jurisdiction pursuant to article I, section 8, clause 17, of the Constitution, and transfers pursuant to a State cession statute.

State authority to make reservations in consent statutes recognized.--In 1937 the Supreme Court for the first time sanctioned a reservation of jurisdiction by a State in granting consent pursuant to article I, section 8, clause 17, of the Constitution, although an examination of the State consent statutes set forth in appendix B of part I of this report discloses that such reservations had not, as a matter of practice, been uncommon prior to that date. In 1937, the Supreme Court, in James v. Drave Contracting Co., 302 U.S. 134 (1937), sustained the validity of a reservation by the State of West

Virginia, in a consent statue, of the right to levy a gross sales tax with respect to work done in a federally owned area to which the consent statute was applicable. In sustaining the reservation of jurisdiction in a State consent statute, the Supreme Court said (pp. 147-149):

It is not questioned that the State may refuse its consent and retain jurisdiction consistent with the governmental purposes for which the property was acquired.

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> The right of eminent domain inheres in the Federal Government by virtue of its sovereignty and thus it may, regardless of the wishes either of the owners or of the States, acquire the lands which it needs within their borders. Kohl v. United States, 91 U.S. 367, 371, 372. In that event, as in cases of acquisition by purchase without consent of the State, jurisdiction is dependent upon cession by the State, jurisdiction is dependent upon cession by the State and the State may qualify its cession by reservations not inconsistent with the governmental uses. * * * The result to the Federal Government is the same whether consent is refused and cession is qualified by a reservation of concurrent jurisdiction, or consent to the acquisition is granted with a like qualification. As the Solicitor General has pointed out, a transfer of legislative jurisdiction carries with it not only benefits but obligations, and it may be highly desirable, in the interest both of the national government and of the State, that the latter should not be entirely ousted of its jurisdiction. The possible importance of reserving to the State jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the Government expand and large areas within the States are acquired. There appears to be no reason why the United States should be compelled to accept exclusive jurisdiction or the State be compelled to grant it in giving its consent to purchases. Normally, where governmental consent is essential, the consent may be granted upon terms appropriate to the subject and transgressing no constitutional limitation.
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> Clause 17 contains no express stipulation that the consent of the State must be without reservations. We think that such a stipulation should not be implied. We are unable to reconcile such an implication with the

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> freedom of the State and its admitted authority to refuse or qualify cessions of jurisdiction when purchases have been made without consent or property has been acquired by condemnation. In the present case the reservation by West Virginia of concurrent jurisdiction did not operate to deprive the United States of the enjoyment of the property for the purposes for which it was acquired, and we are of the opinion that the reservation was applicable and effective.

Retention by Federal Government of less than exclusive jurisdiction on admission of State.--The courts have not had occasion to rule on the question of whether the Federal Government, at the time statehood is granted to a Territory, may retain partial or concurrent jurisdiction, instead of exclusive jurisdiction, over an area within the exterior boundaries of the new State. There appears to be no reason, however, why a degree of legislative jurisdiction less than exclusive in Fort Leavenworth R. R. v. Lowe, supra, and James v. Drawo Contracting Co., supra, the Supreme Court would conclude that partial or concurrent legislative jurisdiction may not be retained.

Non-interference with Federal use now sole limitation on reservations by State.--At this time the quantum of jurisdiction which may be reserved in a State cession or consent statute is almost completely within the discretion of the State, subject always, of course, to Federal acceptance of the quantum tendered by the State, and subject also to non-impingement of the reservation upon any power or authority vested in the Federal Government by various provisions of the Constitution. In Fort Leavenworth R. R. v. Lowe, supra, the Supreme Court indicated (p. 539) that a cession might be accompanied with such conditions as the State might see fit to annex "not inconsistent with the free and effective use of the

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fort as a military post." In Arlington Hotel Company v. Fant, 278 U.S. 439 (1929), the Supreme Court likewise indicated (p. 451) that the State had complete discretion in determining what conditions, if any, should be attached to a cession of legislative jurisdiction, provided that it "saved enough jurisdiction for the United States to enable it to carry out the purpose of the acquisition of Jurisdiction." In United States v. Unzeuta, 281 U.S. 138 (1930). the Supreme Court stated (p. 142) that in the cession statute the State "may impose conditions which are not inconsistent with the carrying out of the purpose of the acquisition." While, it will be noted, these limitations on State reservations of jurisdiction over Federal property all related to reservations in cession statutes, no basis for the application of a different rule to reservations in a consent statute would seem to exist under the decision in James v. Dravo Contracting Co., supra. And it should be further noted that the Supreme Court in the Drave case implied a similar limitation as to the discretion of a State in withholding jurisdiction under a consent statute by stating (p. 149) that the reservation involved in that case "did not operate to deprive the United States of the enjoyment of the property for the purposes for which it was acquired."

Specific reservations approved.--While the general limitation of non-interference with Federal use has been stated to apply to the exercise by a State of its right to reserve a quantum of jurisdiction in its cession or consent statute, apparently in no case to date has a court had occasion to invalidate a reservation by a State as violative of that general limitation. State jurisdictional reservations which have been sustained by the

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courts include the reservation of the right to tax privately owned

railroad property in a military reservation (Fort leavenworth R.R. v.Lowe, supra; United States v. Unzeuta, supra); to levy a gross sales tax with respect to work done in an area of legislative jurisdiction (James v. Dravo Contracting Co., supra; to tax the sale of liquor in a national park subject to legislative jurisdiction (Collins v. Yosemite Park, 304 U.S. 518 (1938)); to permit residents to exercise the right of suffrage (Arapojolu v. McMenamin, 113 Cal.App.2d 824, 249 P.2d 318 (1952)); and to have criminal jurisdiction as to any malicious, etc., injury to the buildings of the Government within the area over which jurisdiction had been ceded to the United States (United States v. Andem, 158 Fed. 996 (D.N.J., 1908)0. And, of course, there are numerous areas, used by the Federal Government for nearly all of its many purposes, as to which the several States retain all legislative jurisdiction, solely or concurrently with the United States, or as to which they have reserved a variety of rights while granting legislative jurisdiction as to other matters to the Federal Government, and as to which no question concerning the State-retained jurisdiction has been raised.

LIMITATIONS ON AREAS OVER WHICH JURISDICTION MAY BE ACQUIRED BY CONSENT OF STATE UNDER CLAUSE 17: In general.--Article I, section 8, clause 17, of the Constitution, provides that the Congress shall have the power to exercise exclusive legislation over "Places" which have been "purchased" by the Federal Government, with the consent of the legislature of the State, "for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." The quoted words serve to limit the scope of clause 17 (but do not apply, since the decision in the Fort Leavenworth R.R. case, supra, to transfers of jurisdiction by other means). They exclude from its purview places which were not "purchased" by the

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Federal Government, and, if the rule of ejusdem generis applied, places which, though purchased by the Federal Government, are for use for purposes not enumerated in the clause.

Area required to be "purchased" by Federal Government.--The "purchase" requirement contained in clause 17 serves to exclude from its operation places which had been part of the public domain and have been reserved from sale. See Fort Leavenworth R.R. v. Lowe, supra; United States v. Unzeuta, supra; Six Cos., Inc. v. De Vinney, 2 F.Supp. 693 (D.Nev., 1933); Lt. Louis-San Francisco Ry. v. Satterfield, 27 F.2d 586 (C.A. 8, 1928). It likewise serves to exclude places which have been rented to the United States Government. Unites States v. Tierney, 28 Fed.Cas. 159, No. 16,517 (C.C.S.D.Ohio, 1864); Mayor and City Council of Baltimore v. Linthicum, 170 Md. 245, 183 Atl. 531 (1936); People v. Bondman, 161 Misc. Rep. 145, 291 N.Y.S. 213 (1936). Acquisition by the United States of less than the fee is insufficient for the acquisition of exclusive jurisdiction under clause 17. Ex Parte Hebard, 11

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Fed. Cas. 1010, No. 6312 (C.C.D.Kan., 1877); United States v. Schwalby, 8 Tex.Civ.App. 679, 29 S.W. 90 (1894), writ of error refused, 87 Tex. 604, 30 S.W. 435, rev'd. on other grounds, 162 U.S.

255. And Federal purchase of property at a tax sale has been held not to transfer jurisdiction. United States v. Penn, 48 Fed. 669 (C.C.E.D.Va., 1880).

The term "purchased" does, however, include acquisitions by means of condemnation proceedings,as will as acquisitions pursuant to negotiated agreements. See James v. Dravo Contracting Co., supra; Mason Co. v. Tax Com'n, supra; Holt v. United States, 218 U.S. 245 (1910); Chaney v. Chaney, 53 N.M. 66, 201 P.2d 782 (1949); Arledge v. Mabry, 52 N.M. 303, 197 P.2d 884 (1948); People v. Collins, 105 Cal. 504, 39 Pac. 16, 17 (1895). The term also includes cessions of title by a State to the Federal Government. United States v. Tucker, 122 Fed. 518 (W.D.Ky., 1903). A conveyance of land to the United States for a consideration of $1 has likewise been regarded as a purchase within the meaning of clause 17. 39 Ops. A.G. 99 (1937). Acquisition of property by a corporation created by a special act of Congress as an instrumentality of the United States for the purpose of operating a soldiers' home constitutes a purchase by the Federal Government for purposes of clause 17. Sinks v. Reese, supra; People v. Mouse, 203 Cal. 782, 265 Pac. 944, app. dism., sub nom. California v. Mouse, 278 U.S. 662, cert. den., 278 U.S. 614 (1928); State v. Intoxicating Liquors, 78 Me. 401, 6 Atl. 4 (1886); State ex rel.

Lyle v. Willett, 117 Tenn. 334, 97 S.W. 299 (1906); Foley v. Shriver, 81 Va. 568 (1886). However, it has been held that a purchase by such a corporation does not constitute a purchase by the Federal Government. In re O'Connor, 37 Wis. 379, 19 Am. Rep. 765 (1875); In re Kelly, 71 Fed. 545 (C.C.E.D. Wis., 1895); Brooks Hardware Co. v. Greer, 111 Me. 78, 87 Atl. 889 (1911), (question was left open); see also Tagge v. Gulzow, 132 Neb. 276, 271 N.W. 803 (1937). Since acquisitions by condemnation are construed as purchases under article I, section 8, clause 17, of the Constitution, it seems that donations would also be interpreted as purchases. See Pothier v. Rodman, 285 Fed. 632 (D.R.I., 1923), aff'd., 264 U.S. 399 (1924); question raised but decision based on other grounds in Mississippi River Fuel Corporation v. Fontenot, 234 F.2d 898 (C.A. 5, 1956), cert. den., 352 U.S. 916.

In State ex rel. Board of Commissioners v. Bruce, 104 Mont. 500, 69 P.2d 97 (1937), the court considered the question when a purchase is completed. Originally, Montana had a combined cession and consent statute,reserving to the State only the right to serve process. Another statute was enacted in 1934 consenting to the acquisition of and ceding jurisdiction over lands around Fort Peck Dam, but reserving to the State certain rights, including the right to tax within the territory. The Government, prior to the passage of the second act, secured options to purchase land from individuals, entered into possession and made improvements under agreements with the owners. Contracts of sale and deeds were not executed until after the passage of the second act. The court held that by going into possession and making improvements the United States accepted the option and completed a binding obligation which was a "purchase" under the Constitution, and that the State had no right to tax within the ceded territory. The case came up again on the same facts in light of several Supreme Court decisions. The Supreme Court of Montana reached the same decision. State ex rel. Board of Commissioners v. Bruce, 106 Mont. 322, 77 P.2d 403 (1938), aff'd., 305 U.S. 577. But

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in Valley County v. Thomas, 109 Mont. 345, 97 P.2d 345 (1939), the Montana court came to a contrary conclusion, specifically overruling the Bruce cases.

Term "needful Buildings" construed. The words "Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings," as they appear in article I, section 8, clause 17, of the Constitution, generally have not been construed according to the rule of ejusdem generis; the words "other needful Buildings"have been construed as including structures not of a military character ad any buildings or works necessary for governmental; purposes. 28 Ops. A.G. 185 (1935). Thus, post offices, courthouses and customs houses all have been held to constitute "needful Buildings." The term "needful Buildings" in

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clause 17 has also been held to include national cemeteries, penitentiaries, steamship piers, waters adjoining Federal lands, aeroplane stations, Indian schools, canal locks and dams, National Homes for Disabled Volunteer Soldiers, res-

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ervoirs and aqueducts, and a relocation center. In Nikis v. Commonwealth, 144 Va. 618, 131 S.E. 236 (1926), it was held that the abutment and approaches connected with a bridge did not come within the term "buildings," but a cession statute additionally reciting consent rather than a simple consent statute was there involved.

The Attorney General has said (26 Ops. A.G. 289 (1907), (p. 297)):

> There can be no question and, so far as I am aware, none has been raised that the word "buildings" in this passage [of the Constitution] is used in a sense sufficiently broad to include public works of any kind * * *

The most recent, and most comprehensive, definition of the term "needful Buildings," as it appears in clause 17, is to be found in James v. Dravo Contracting co., 302 U.S. 134, in which the court said (pp. 142-143):

> Are the locks and dams in the instant case "needful buildings" within the purview of Clause 17? The State contends that they are not. If the clause were construed according to the rule of ejusdem generis, are those of the same sort as forts, magazines, arsenals and dockyards, that is, structures for military purposes. And it may be that the thought of such "strongholds" was uppermost in the minds of the framers. Eliot's Debates, Vol. 5, pp. 130, 440, 511; Cf. Story on the Constitution,

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> Vol. 2 Sec. 1224. But such a narrow construction has been found not to be absolutely required and to be unsupported by sound reason in view of the nature and functions of the national government which the Constitution established. * * * We construe the phrase"other needful buildings" as embracing whatever structures are found to be necessary in the performance of the functions of the Federal Government.

In this decision,the Supreme court expressed its sanction to the conclusion therefore generally reached by other authorities, that the rule of ejusdem generis had been renounced, and that acquisition by the United States for any purpose might be held to fall within the Constitution, where a structure is involved.

LIMITATIONS ON AREAS OVER WHICH JURISDICTION MAY BE ACQUIRED BY CESSION OF STATE: Early view.--Until the Fort leavenworth R.R. case, the courts had made no distinction between consents and cessions, and had treated cessions as the "consent" referred to in the Constitution. United States v. Davis, 25 Fed. Cas. 781, No. 14,930 (C.C.D.Kan..,

1877). In the case of In re O'Connor, 37 Wis. 379, 19 Am. Rep. 765 (1875), decided before Fort Leavenworth R.R. v. Lowe, supra, the stated (p. 387):

> For it is not competent for the legislature to abdicate its jurisdiction over its territory, except where the lands are purchased by the United States, for the specific purposes contemplated by the constitution. When that is done, the state may cede its jurisdiction over them to the United States.

Present view.--After the Fort Leavenworth R.R. case, it was held that either a purchase with the consent of the States or an express cession of jurisdiction could accomplish a transfer of legislative jurisdiction. United States v. Tucker, 122 Fed. 518 (W.D. Ky., 1903); Commonwealth v. King, 252 Ky. 699, 68 S.W.2d 45 (1934); State ex rel. Jones v. Mack, 23 Nev. 359, 47 Pac. 763 (1897); Curry v. State, 111 Tex.Cr.App. 264, 12 S.W.2d (1928); 9 Ops.A.G. 263 (1858); 13 Ops.A.g. 411 (1871); 15 Ops.A.G. 480 (1887); cf. United States v. Andem, 158 Fed. 996 (D.N.J., 1908).

By means of a cession of legislative jurisdiction by a State, the Federal Government may acquire legislative jurisdiction not only over areas which fall within the purview of article I, section 8, clause 17, of the Constitution, but also over areas not within the scope of that clause. While a State may cede to the Federal Government legislative jurisdiction over a "place" which was "purchased" by the Federal Government for the "Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings," it is not essential that an area be "purchased" by the Federal Government in order to be the subject of a State cession statute. Thus, the transfer of legislative jurisdiction pursuant to a State cession statute has

been sustained with respect to areas which were part of the public

domain and which have been reserved from sale or other disposition. Fort Leavenworth R.R. v. Lowe, supra; Chicago, Rock Island & Pacific Railway v. McGlinn, 114 U.S. 542 (1885); Benson v. United States, 146 U.S. 325 (1892). It is not even essential that the Federal Government own an area in order to exercise with respect to it legislative jurisdiction ceded by a State. Thus, a privately owned railroad line running through a military reservation may be subject to federal legislative jurisdiction as the result of a cession. Fort Leavenworth R.R. v. Lowe, supra; Chicago, etc., Ry. v. McGlinn, supra; United States v. Unazeuta, supra. Similarly, a privately operated hotel or bath house leased from the Federal Government and licitation a military reservation may, as a result of a State cession statute, be subject to Federal legislative jurisdiction. Arlington Hotel Company v. Fant, 278 U.S. 439 (1929); Buckstaff Bath House Co. v. McKinley, 308 U.S. 358 (1939). Superior Bath House Co. v. McCaroll, 312 U.S. 176 (1941). Legislative jurisdiction acquired pursuant to a State cession statute may extend to privately owned land within the confines of a national park. Petersen v. United States, 191 F.2d 154 (C.A. 9, 1951), cert. den., 342 U.S. 885. It will not so extend if the State's cession statute limits cession to lands owned by the Government. Op. A.G., Cal., No. NS3019 (Oct. 22, 1940). In United States v. Unzeuta, supra, the extension of Federal legislative jurisdiction over a privately owned railroad right-of-way located within an area which was owned by the Federal Government and subject to the legislative jurisdiction of the Federal Government was justified as follows (pp. 143-145):

> * * * There was no express exception of jurisdiction over this right of way, and it can not be said that there

> was any necessary implication creating such an exception. The proviso that the jurisdiction ceded should continue no longer than the United States shall own and occupy the reservation had reference to the future and cannot be regarded as limiting the cession of the entire reservation as it was known and described. As the right of way to be located with the approval of the Secretary of War ran across the reservation, it would appear to be impracticable for the State to attempt to police it, and the Federal jurisdiction may be considered to be essential to the appropriate enjoyment of the reservation for the purpose to which it was devoted.
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> The mere fact that the portion of the reservation in question is actually used as a railroad right of way is not controlling on the question of jurisdiction. Rights of way for various purposes,such as for railroads, ditches. pipe lines, telegraph and telephone lines across Federal reservations, may be entirely compatible with exclusive jurisdiction ceded to the United States. * * * While the grant of the right of way to the railroad company contemplated a permanent use, this does not alter the fact that the maintenance of the jurisdiction of the United States over the right of way, as being within the reservation, might be necessary in order to secure the benefits intended to be derived from the reservation.

This excerpt from the court's opinion appears to indicate that the proctocolitis of a given situation will be highly persuasive, if

not conclusive, on the issue of whether Federal legislative jurisdiction may be exercised over privately owned areas used for non-governmental purposes.

Cessions of legislative jurisdiction are free not only from the requirements of article I, section 8, clause 17, as to purchase--and, with it, ownership--but they are also free from the requirement that the property be used for one of the purposes enumerated in clause 17, assuming that however broad

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those purposes are under modern decisions the term "other needful Buildings" used therein may have some limitation. In Collins v. Yosemite Park Co., 304 U.S. 518 (1938), in which the Supreme Court sustained the exercise of Federal legislative jurisdiction acquired pursuant to a State cession statute,it was said (pp. 529-530):

> * * * There is no question about the power of the United States to exercise jurisdiction secured by cession, thought this is not provided for by Clause 17. And it has been held that such a cession may be qualified. It has never been necessary, heretofore, for this Court to determine whether or not the United States has the constitutional right to exercise jurisdiction over territory, within the geographical limits of a State, acquired for purposes other than those specified in Clause 17. It was raised but not decided in Arlington Hotel v. Fant, 278 U.S. 439, 454. It was assumed without discussion in Yellowstone Park Transportation Co. v. Gallatin County, 31 F.2d 644. On account of the regulatory phases of the Alcoholic Beverage control Act of California, it is necessary to determine that question here. The United States has large bodies of public lands. These properties are used for forests,parks, ranges,wild life sanctuaries, flood control, and other purposes which are not covered by Clause 17. In Silas Mason Co. v. Tax commission of Washington, 302 U.S. 186, we upheld in accordance with the right of the United States to acquire private property for use in "the reclamation of arid and semiarid lands" and to hold its purchases subject to state jurisdiction. In other instances,it may be deemed important or desirable by the National Government and the State Government in which the particular property is located that exclusive jurisdiction be vested in the United States by cession or consent. No ques-

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> tion is raised as to the authority to acquire land or provide for national parks. As the National Government may, "by virtue of its sovereignty" acquire lands within the border of states by eminent domain and without their consent, the respective sovereignties should be in a position to abject their jurisdiction. There is no constitutional objecting to such an adjustment of right. * * *

This quoted excerpt suggests that the Federal Government may exercise legislative jurisdiction, ceded to it by a State, over any area which it might own, acquire, or use for Federal purposes. In Bowen v. Johnston, 306 U.S. 19 (1939), the Supreme Court again indicated that

it was constitutionally permissible for the Federal Government to exercise over a national park area legislative jurisdiction which might be ceded to it by a State.

Specific purposes for which cessions approved.--While the Collins case, supra, indicates the current absence of limitations, with respect to use or purpose for which the Federal Government acquires land, on the authority to transfer legislative jurisdiction to that Government by cession, it is of interest to note something of the variety of specific uses and purposes for which cessions had been deemed effective: post offices, court-houses and custom houses: United States v. Andem, 158 Fed. 996 (D.N.J., 1908); Brown v. United States, 257 Fed. 46 (C.A. 5, 1919), rev'd. on other grounds, 256 U.S. 335 (1921); State ex rel. Jones v. Mack, 23 Nev. 359, 47 Pac. 763 (1897), (cession statute treated as a consent); Saver v. Steinbasuer, 14 Wis. 70 (1881); lighthouses: Newcomb v. Rockport, 183

Mass. 74, 66 N.E. 587 (1903); national penitentiary: Steele v. Halligan, 229 Fed. 1011 (W.D. Wash., 1916); national home for disabled volunteer soldiers: People v. Mouse, 203 Cal. 782, 265 Pac. 944, app. dem., 278 U.S. 662 (1928); bridge for military purposes: 13 Ops. A.G. 418 (1871); national parks: Robbins v. United States, 284 Fed. 39 (C.A. 8, 1922); Yellowstone Park Transp. Co. v. Gallatin County, 31 F.2d 644 (C.A. 9, 1929), cert. den., 280 U.S. 555; State ex rel. Grays Harbor Construction Co. v. Department of Labor and Industries, 167 Wash. 507, 10 P.2d 213 (1932). Cf. Via v. State Commission on Conservation, etc., 9 F.Supp. 556 (W.D.Va., 1935), aff'd, 296 U.S. 549 (1939); waters contiguous to nave yard: Ex parte Tatem, 23 Fed. Cas. 708, No. 13,759 (E.D.Va., 1877).

LIMITATIONS ON AREAS OVER WHICH JURISDICTION MAY BE RETAINED BY FEDERAL RESERVATION: The courts have not, apparently,had occasion to consider whether any limitations exist with respect to the types of areas in which the Federal Government may exercise legislative jurisdiction by reservation at the time of granting statehood. There appears, however, to be no reason for concluding that Federal legislative jurisdiction may not be thus retained with respect to all the variety of areas over which Federal legislative jurisdiction may be ceded by a State.

PROCEDURAL PROVISIONS IN STATE CONSENT OR CESSION STATUTES: A number of State statutes providing for transfer of legislative jurisdiction to the Federal Government contain provisions for the filing of a deed, map, plat, or description pertaining to the land involved in the transfer, or for other action by Federal or State authorities, as an incident of such transfer. Such provisions have variously held to constitute conditions precedent to a transfer of jurisdiction, or as

pertaining to matters of form noncompliance with which will not defeat an otherwise proper transfer. It has also been held that there is a presumption of Federal compliance with State procedural requirements. Steele v. Halligan, 229 Fed. 1011 (W.D.Wash., 1916).

JUDICIAL NOTICE OF FEDERAL EXCLUSIVE JURISDICTION: Comfit of decisions.--There is a conflict between decisions of several State courts with respect to the question whether the court will take judicial notice of the acquisition by the Federal Government of exclusive jurisdiction. In Baker v. State, 47 Tex. Cr.App. 482, 83 S.W. 1122 (1904), the court took judicial notice that a certain parcel of land was owned by the United States and was under its exclusive jurisdiction. And in Lasher v. State, 30 Tex. Cr.App. 387, 17 S.W. 1064 (1891), it was stated that the courts of Texas would take judicial notice of the fact that Fort McIntosh is a military post, ceded to the United States, and that crimes committed within such fort are beyond the jurisdiction of the State courts.

A number of States uphold the contrary view, however. In People v. Collins, 105 Cal. 504, 39 Pac. (1895), the court

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took the view that Federal jurisdiction involves a question of fact and that the courts would not take judicial notice of such questions.

In United States v. Carr, 25 Fed.Cas. 306, No. 14,732 (C.C.S.D.Ga., 1872), the court held that allegation of exclusive Federal jurisdiction in the indictment, without a deniable the defendant during the trial, was sufficient to establish Federal jurisdiction over the crime alleged. As to lands acquired by the Federal Government since the amendment of section 355 of the Revised Statutes of the United States on February 1, 1940, which provided for formal acceptance of legislative jurisdiction, it would appear necessary to establish the fact

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of such acceptance in order to establish Federal jurisdiction. In any event, whether the United States has legislative jurisdiction over an area, and the extent of any such jurisdiction, involve Federal questions, and a decision on these questions by a State court will not be binding on Federal courts.

CHAPTER IV

TERMINATION OF LEGISLATIVE JURISDICTION

UNILATERAL RETROCESSION OR RECAPTURE OF JURISDICTION: RETROCESSION.--There has been discussed in the preceding chapter whether the United States, while continuing in ownership and possession of land, may unilaterally retrocede to the State legislative jurisdiction it has held with respect to such land. It was concluded that, while there is opinion to the contrary, by analogy to the decision in the case of Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885), acceptance of such retrocession by the State is essential, although it seems probable that such acceptance may be presumed in the absence of--to use the term employed in the Fort Leavenworth R.R. case, supra--a "dissent" on the part of the State.

Recapture.--In Yellowstone Park Transp. Co. v. Gallatin County, 31 F.2d 644 (C.A. 9, 1929), cert. den., 280 U.S. 555, it was stated that a State cannot unilaterally recapture jurisdiction which had previously been ceded by it to the Federal Government. A similar rule must apply, for lack of any basis on which to rest any different legal reasoning, where Federal legislative jurisdiction by the Federal Government at the time the State was admitted into the Union, or where it is derived

from the provisions of article I, section 8, clause 17, of the Constitution. In any case, therefore, it would appear clear that a State cannot unilaterally recapture legislative jurisdiction once it is vested in the Federal Government.

MEANS OF TERMINATION OF JURISDICTION: In general.--Federal legislative jurisdiction over an area within a State will, however, terminate under any of the following three sets of circumstances:

1. Where the Federal Government, by or pursuant to an act of Congress, retrocedes jurisdiction and such retrocession is accepted by the State;
2. Upon the occurrence of the circumstances specified in a State cession or consent statute for the reversion of legislative jurisdiction to the State; or
3. When the property is no longer used for a Federal purpose.

FEDERAL STATUTORY RETROCESSION OF JURISDICTION: In general.--Over the years the United States Government has, in the natural course of events, acquired legislative jurisdiction over land when such jurisdiction obviously was neither needed nor exercised. In some such cases where hardship has been worked on the Federal Government, on State and local governments, or on individuals, statutes have been enacted by the Congress returning jurisdiction to the States. These statutes can be grouped into categories:

1. Those enacted to give the inhabitants of federally owned property the normal incidents of civil government enjoyed by the residents of the State in which the property is located, such as voting and access to the local courts i cases where residence within a State is a factor.

2. Those enacted to give State or local governments authority for policing highways traversing federally owned property.

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A small number of other somewhat similar statutes cannot easily be categorized.

This chapter deals only with general retrocessions of legislative jurisdiction possessed by the United States. Retrocessions relating to particular matters, such as taxation, will be dealt with in chapter VII.

Right to retrocede not early apparent.--The right of Congress to retrocede jurisdiction over lands which are within the exclusive legislative jurisdiction of the United States has not always been apparent. Justice Story, it has already been noted, had expressed the view in 1819 that the Federal Government was required by clause 17 to assume jurisdiction over areas within the conflicting views that continued to exist on the subject of retrocession even at that late date. Both the senators who favored the bill and those who opposed it were desirous of finding a means of negating or avoiding a decision of the Supreme Court of Ohio, preceding the enactment in 1871 of a statute retroceding jurisdiction over a disabled soldiers' home in Ohio demonstrates the conflicting views that continued to exist on the subject of retrocession even at that late date. Both the senators who favored the bill and those who opposed it were desirous of finding a means of negating or avoiding a decision of the Supreme Court of Ohio, which had held that the residents of the home could not vote because of Federal possession of legislative jurisdiction over the area on which the home was located. Contemplating Justice Story's decision on the one hand, and the Ohio decision on the other, Senator Thurman of Ohio said, "the dilemma, therefore, is one out of which you cannot get." Out of the dilemma, however, Congress did get, but not without much debate. Without detailing the arguments, pro and con, advanced during Senate debate, a few quotations will suffice to point out the reasoning in favor of and against the measure.

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During the debate Senator Thurman also said:

> It [the bill] provides, that "the jurisdiction over the place" shall be ceded to the State of Ohio. Is it necessary for me to say to any lawyer that that is an unconstitutional bill? The Constitution of the United States says in so many words that the Congress shall have power "to exercise exclusive jurisdiction in all cases whatsoever over" such territory. Can Congress cede away one of its powers? We might as well undertake to cede away the power to make war, the power to make peace, to maintain an

> Army or a Navy, or to provide a civil list, as to undertake to cede away that power.

and:

> * * * As was read to the Senate yesterday from a decision made by Judge Story, it is not competent for Congress to take a cession of land for one of the purposes mentioned in the clause of the Constitution which I read yesterday, to wit, for the seat of the national capital, for forts, arsenals, hospitals, or the like; it is not competent for Congress to take any such cession limited by a qualification that the State shall have even concurrent jurisdiction with the Federal Government over that territory, much less that the State can have exclusive jurisdiction over it; because the Constitution of the United States, the supreme law of the land, declares that over all territory owned by the United States for such a purpose Congress shall have exclusive jurisdiction. Then, obviously, if it is not competent for Congress to accept from a State a grant of territory the State reserving jurisdiction over it, or even a qualified jurisdiction over it, where the territory is used for one of these purposes, as a matter of course Congress cannot cede away the jurisdiction of the United States.

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In discussing whether it was necessary that exclusive jurisdiction be in the United States, Senator Morton of Indiana, one of the proponents of the bill, said:

> It [clause 17] does not say it shall have; but the language is, "and to exercise like authority;" that is, it may acquire complete jurisdiction; but may it not acquire less? Now, I undertake to say that the rule and the legislation heretofore by which the Government has had exclusive jurisdiction over arsenals in the States has been without good reason. It has always been a difficulty. There is not any sense in it. It would have been a matter of more convenience from the beginning, both to the Federal Government and the States, if the ordinary jurisdiction to punish crimes and enforce ordinary contracts had been reserved over arsenal grounds and in forts. There never was any reason in that. It has always been a blunder and has always been an inconvenience.
>
> But the question is now presented whether the Government may not, by agreement with the State, take jurisdiction just so far as she needs it, and leave the rest to the State, where it was in the first place. It seems to me that reason says that that may be done, because the greater always includes the less. It seems, too, that convenience would say that it should be done. * * *

The bill was passed. The Supreme Court of the State of Ohio, in another contested election case, thereafter upheld the right of the inmates of the home to vote. In the course of the court's opinion the authority of Congress to retrocede jurisdiction was likewise upheld.

Right to retrocede established.--That the Federal Government may

retrocede to a State legislative jurisdiction over an

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area and that a State may accept such retrocession would appear to be fully established by the reasoning adopted by the Supreme Court in Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885), in which it was stated that the rearrangement of legislative jurisdiction over a Federal area within the exterior boundaries of a State is a matter of agreement by the Federal Government and the particular State in which the federally owned area is located. While this reasoning was employed to sustain a cession of legislative jurisdiction by a State to the Federal Government, it would appear to be equally applicable to a retrocession of legislative jurisdiction to a State.

Some 27 years after enactment of the legislation retroceding jurisdiction over the disabled soldiers' home in Ohio, Congress enacted a statute similarly retroceding jurisdiction over such homes in Indiana and Illinois. The Supreme Court of Indiana, in a case contesting the inmates' right to vote, upheld this right and the right of Congress to retrocede jurisdiction. An additional such retrocession statute, involving a home in Kansas, was enacted in 1901.

Construction of retrocession statutes.--It has been held that statutes retroceding jurisdiction to a State must be strictly construed. This view was not followed, on the other hand, in Offutt Housing Company v. Sarpy County, 351 U.S. 253 (1956). There, the Supreme Courts said (p. 260):

> * * * We could regard Art. I, Sec. 8, cl. 17 as of such overriding and comprehensive scope that consent by Congress to state taxation of obviously valuable private interests located in an area subject to the power of "exclusive Legislation" is to be found only in explicit and unambiguous legislative enactment. We have not here-

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> tofore so regarded it, see S.R.A., Inc. v. Minnesota, 327 U.S. 558; Baltimore Shipbuilding Co. v. Baltimore, 195 U.S. 375, nor are we constrained by reason to treat this exercise by Congress of the "exclusive Legislation" power and the manner of construing it any differently from any other exercise by Congress of that power. This is one of those cases in which Congress has seen fit not to express itself unequivocally. It has preferred to use general language and thereby requires the judiciary to apply this general language to a specific problem. To that end we must resort to whatever aids to interpretation the legislation in its entirety and its history provide. Charged as we are with this function, we have concluded that the more persuasive construction of the statute, however flickering and feeble the light afforded for extracting its meaning, is that the States were to be permitted to tax private interests, like those of this petitioner, in housing projects located on areas subject to the federal power of "exclusive Legislation." We do not hold that Congress has relinquished its power over these areas. We hold only that Congress, in the exercise of its

> power, has permitted such state taxation as is involved in the present case.

It is difficult to follow the reasoning in the Offutt case that the Congress did not relinquish the Federal power of "exclusive Legislation" over the areas involved, but merely permitted State taxation, since imposition of taxes requires "jurisdiction" in the State over the subject matter, aside from any "consent" of the Federal Government, as will be more fully developed hereinafter.

SUMMARY OF RETROCESSION STATUTES: Retrocessions few.--There have been relatively few instances, however, in which the federal Government has retroceded all legislative jurisdiction over an area that is normally exercised by a State. The

instances mentioned below are all which were found in a diligent search of Federal statutes.

Statutes enacted to afford civil rights to inhabitants of Federal enclaves.--One of the earliest retrocession statutes enacted by the Congress of the United States involved a portion of the District of Columbia. The seat of the general government had been established on territory received in part from the State of Maryland and in part from the State of Virginia, embracing the maximum ten miles square permitted by clause 17. By the act of February 27, 1801, 2 Stat. 103, that portion of the District of Columbia which had been ceded by Maryland was designated the county of Washington, and that portion which had been ceded by Virginia was denominated the county of Alexandria. A report on the bill providing for retrocession to Virginia of Alexandria County stated:

> * * * The people of the county and town of Alexandria have been subjected not only to their full share of those evils which affect the District generally, but they have enjoyed none of those benefits which serve to mitigate their disadvantages in the county of Washington. The advantages which flow from the location of the seat of government are almost entirely confined to the latter county, whose people, as far as your committee are advised, are entirely content to remain under the exclusive legislation of Congress. But the people of the county and town of Alexandria, who enjoy few of those advantages, are (as your committee believe) justly impatient of a state of things which subjects them not only to all the evils of inefficient legislation, but also to political disfranchisement. To enlarge on the immense value of the elective franchise would be unnecessary before an American Congress, or in the present state of public opinion. The condition of

> thousands of our fellow-citizens who, without any equivalent, (if equivalent there could be,) are thus denied a vote in the local or general legislation by which they are governed, who, to a great extent, are under the operation of old English and Virginia statutes, long since repealed in the counties where

> they originated, ad whose, sons are cut off from many of the most highly valued privileges of life, except upon the condition of leaving the soil of their birth, is such as most deeply move the sympathies of those who enjoy those rights themselves, and regard them as inestimable. * * *

It has been noted that other statutes, the acts of January 21, 1871, 16 Stat. 399, July 7, 1898, 30 Stat. 668, and March 3, 1901, 31 Stat. 1175, were thereafter enacted by the Congress in concern over voting rights. During the debate on the Congress in concern over voting rights. During the debate on the 1871 bill much was said, pro and con, concerning the "right" of the inhabitants of the disabled soldiers' home to vote.

Other statutes of "special" application have been passed which involved additional fields of civil rights. One such statute is the act of March 4, 1921. During World War I the United States Housing Corporation acquired exclusive jurisdiction over a site on which a town was to be built for the purpose of housing Government employees. After the war, according to the report which accompanied the bill to the House of Representatives, the Federal Government desired:

> * * * that the property [jurisdiction] be retroceded to the State of Virginia in order that that State may exercise political power, so that taxes may be levied and the town may be incorporated. As it is now, the town of Cradock, consisting of 2,000 people, is without the protection of any civil government, as the National Government is no longer in charge there.

The bill passed both the Senate and House without discussion or debate. Another statute of "special" application which deals with the problem of normal civil rights for inhabitants of Federal enclaves is the act of March 4, 1949, known as the Los Alamos Retrocession Bill. Identical bills were introduced in the House and Senate to cover the problems arising at the Atomic Energy Commission area at Los Alamos. The House bill was finally enacted. The following extract from the Senate report on the bill indicates the problems desired to be eliminated by the legislation:

> The need for establishing uniformity of jurisdiction in the administration of civil functions of the Los Alamos area, and the further need for assuring the people of the area the right of franchise and the right to be heard in the courts of New Mexico, was emphasized by two recent decisions of the Supreme Court of the State of New Mexico. These decisions declared that those persons residing on territory subject to exclusive Federal jurisdiction are not citizens of the State of New Mexico and, therefore, have neither the right to vote nor the right to sue in courts of that State for divorce. However, under an act of Congress approved October 9, 1940 (Buck Act), the State of New Mexico is authorized to require such noncitizens to pay sales, use, and income taxes just as do those persons enjoying full State citizenship.
>
> The effect of this bill will be to remove disabilities inherent in the noncitizen status of persons residing on the areas now under exclusive Federal jurisdiction. It will give them the same rights and privileges which those persons residing on lands

at Los Alamos under State jurisdiction now enjoy. It will give them the right to

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vote in State and Federal elections. It will give them the right to have full effect given to their wills and to have their estates administered. It will give them rights to adopt children, to secure valid divorces in appropriate cases, and to secure licenses to enjoy the land for hunting and fishing.

The Atomic Energy Act of 1954 included a section which similarly retroceded jurisdiction over Atomic Energy Commission land at Sandia Base, Albuquerque, to the State of New Mexico.

Statutes enacted to give State or local governments authority for policing highways.--These statutes may be divided into two groupings, "general" and "special." There are two in the "general" category, one authorizing the Attorney General, and the other the Administrator of Veterans' Affairs, in very similar language, to grant to States or political subdivisions of States easements in or rights-of-way over lands under the supervision of the Federal officer granted the power, and to cede to the receiving State partial, concurrent, or exclusive jurisdiction over he area involved in the grant. Both these statutes, it is indicated by information in official records, were enacted to resolve problems arising out of the desirability of State, rather than Federal, policing of highways. Efforts of the Department of Defense to acquire authority similar to that given by these statutes to the Attorney General and the Administrator of Veterans' Affairs have not been successful to this time, notwithstanding that apparently all the "special" statutes enacted to provide State authority for policing highways have involved military installations.

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The first of the statutes of "special" application in the field of jurisdiction over highways concerned the Golden Gate Bridge and the California State highways, which crossed the Presidio of San Francisco Military Reservation and the Fort Baker Military Reservation. On February 13, 1931, the Secretary of War, exercising a congressional delegation of authority, granted to the Golden Gate Bridge and Highway District of California certain rights-of-way to extend, maintain and operate State roads across these military reservations. The grant from the Secretary of War was subject to the condition that the State of California would assume responsibility for managing, controlling, policing and regulating traffic. A subsequent statute retroceded to the State of California the jurisdiction necessary for the State to carry out its responsibility for policing the highways.

The next statute related to another approach to the Golden Gate Bridge. Statutes enacted thereafter have related to highways occupying areas at Vancouver Barracks Military Reservation, Washington, Fort Devens Military Reservation, Massachusetts, Fort Bragg, North Carolina, Fort Sill, Oklahoma, Fort Belvoir, Virginia, and Wright-Patterson Air Force Base, Ohio.

Miscellaneous statutes retroceding jurisdiction.--Six statutes appear to have been enacted by the Federal Government retroceding jurisdiction for reasons not demonstrably connected with civil rights of inhabitants or State policing of highways. The first of these in point of time was enacted in 1869, to permit the State of Vermont to exercise jurisdiction over a State court building which was permitted to be constructed on federally owned land. A 1914 statute temporarily retroceded to the State of California jurisdiction over portions of the Presidio of San Francisco and Fort Mason, so that city and State authorities could police these areas during a period when the Panama-Pacific International Exposition was to be held thereon.

A 1927 statute ceded to the Commonwealth of Virginia jurisdiction over an area known as Battery Cove, for the purpose of transferring from Federal to Virginia officials authority to police the area. The cove, which was on the Potomac River abutting Virginia, had been transformed into dry land during dredging operations in the Potomac. It was part of the territory originally ceded to the United States by Maryland for the seat of government. In 1939, the Congress enacted a statute retroceding to the Commonwealth of Massachusetts jurisdiction over a bridge in Springfield. The reason for this retrocession was that, while

the bridge spanned a pond located on territory over which the United States exercised exclusive legislative jurisdiction, both ends of the bridge were located on land controlled by the city.

In 1945, long existing disputes and confusion over the boundary line between the District of Columbia and the Commonwealth of Virginia led to the enactment of a statute by the Federal Government ceding concurrent jurisdiction to the Commonwealth over territory to a line fixed as a boundary.

The only remaining instance found of the Federal enactment of a retrocession statute for a miscellaneous purpose relates to the Chain of Rocks Canal in Madison County, Wisconsin. That statute was enacted, it seems, simply because the United States had no further requirement for jurisdiction over the area involved.

REVERSION OF JURISDICTION UNDER TERMS OF STATE CESSION STATUTE: In general.--Most State statutes providing for cession of legislative jurisdiction to the United States further provide for reversion of the ceded jurisdiction to the State upon termination of Federal ownership of the property. Some of these, and other State statutes, contain various provisions otherwise limiting the duration of Federal exercise of ceded jurisdiction. The Attorney General has since an early date approved such limitations.

Leading cases.--In two important Federal court cases consideration was given to the effect of provisions in a State cession statute that the legislative jurisdiction transferred by such statute to the Federal Government shall cease or revert

to the State upon the occurrence of the conditions specified in the statute. In each of these cases, the legal validity of such provision was fully sustained although in one instance the Supreme Court indicated that Federal legislative jurisdiction might merely be "suspended" while the circumstances specified in the State statute prevailed.

In Crook, Horner & Co. v. Old Point Comfort Hotel Co., et al., 54 Fed. 604 (C.C.E.D.Va., 1893), the court gave effect to the provisions in a Virginia cession statute that legislative jurisdiction diction shall exist in the United States only so long as the area is used for fortifications and other objects of national defense, and that such jurisdiction shall revert to Virginia in the event the property is abandoned or used for some purpose not specified in the Virginia cession statute.

In Palmer v. Barrett, 162 U.S. 399 (1896), New York had ceded to the United States jurisdiction over the Brooklyn Navy Yard subject to the condition that it be used for a navy yard and hospital purposes. Part of the area in question was subsequently leased to the city of Brooklyn for use by market wagons. The lease was terminable by the United States on thirty days' notice; it provided that the city of Brooklyn would patrol the premises, that no permanent buildings would be erected on the premises, and that during the period of the lease the water tax for water consumed by the Navy Yard would be reduced to that charged to manufacturing establishments in Brooklyn. The plaintiff brought suit in the State courts to recover damages for his alleged unlawful ouster from two market stands which had been in his possession. One of the defenses was that the State court had no jurisdiction. The United States Supreme Court disposed of this contention as follows (p. 403):

> * * * The power of the State to impose this condition [that the land be used for purposes of a navy yard and hospital] is clear. In speaking of a condition placed by the State of Kansas on a cession of jurisdiction made by that State to the United States over land held by the United States for the purposes of a military reservation, this court said in Fort Leavenworth Railroad v. Lowe, (p. 539), supra: "It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex, not inconsistent with the free and effective use of the fort as a military post."

As to the question of jurisdiction, the court said (p. 404):

> * * * In the absence of any proof to the contrary, it is to be considered that the lease was valid, and that both parties to it received the benefits stipulated in the contract. This being true, the case then presents the very contingency contemplated by the act of cession, that is, the exclusion from the jurisdiction of the United States of such portion of the ceded land not used for the governmental purposes of the United States had been free from condition or limitation, the land should be treated and considered as within the e jurisdiction of the United States, it is clear that under the circumstances here existing, in view of the reservation made by the State of New

> York in the act ceding jurisdiction, the exclusive authority of the United States over the land covered by the lease was at least suspended whilst the lease remained in force.

Had the Federal Government, instead of leasing the property to the city of Brooklyn on a short-term lease, devoted it to Federal purposes other than those specified in the New York cession statute, legislative jurisdiction would presumably have

reverted to the State of New York Although the court in the case before it spoke of the suspension of jurisdiction, instead of termination of jurisdiction, it presumably took into account the fact that the lease was of short duration and that there was no evidence that the Federal Government had abandoned all plans for the future use of the leased area for the purposes specified in the New York statute. It must be assumed that a permanent reversion, instead of a temporary suspension, of Federal legislative jurisdiction would occur where the evidence indicates that it is no longer the intention of the Federal Government to use the property for the purposes specified in the State cession statute.

REVERSION OF JURISDICTION BY TERMINATION OF FEDERAL USE OF PROPERTY: Doctrine announced.--In the case of Fort Leavenworth R.R. v. Lowe, U.S. 525 (1885), when considering a cession statute which did not contain a reverter provision the court nevertheless said of the ceded jurisdiction (p. 542):

> * * * It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the State.

Discussion of doctrine.--Only in one case, however, has the Supreme Court concluded that reversion for such reasons had occurred. In S.R.A., Inc v. Minnesota, 327 U.S. 558 (1946), the question presented was whether the State of Minnesota had jurisdiction to tax realty sold by the United States to a private party under an installment contract, the tax being assessed "subject to fee title remaining in the United States," where such realty had been purchased by the United States with the consent of the State. After stating that a State must have jurisdiction in order to tax, the court said (pp. 563-564):

> In this instance there were no specific words in the contract with petitioner which were intended to retain sovereignty in the United States. There was no express retrocession by Congress to Minnesota, such as sometimes occurs. There was no requirement in the act of cession for return of sovereignty to the State when the ceded territory was no longer used for federal purposes. In the absence of some such provisions, a transfer of property held by the United States under state cessions pursuant to Article I, Sec. 8, Clause 17, of the Constitution would leave

> numerous isolated islands of federal jurisdiction, unless the unrestricted transfer of the property to private hands is thought without more to revest sovereignty in the States. As the purpose of Clause 17 was to give control over the sites of governmental operations to the United States, when such control was deemed essential for federal activities, it would seem that the sovereignty of the United States would end with the reason for its existence and the disposition of the property. We shall treat this case as though the Government's unrestricted transfer of property to nonfederal hands is a relinquishment of the exclusive legislative power. Recognition has been given to this result as a rule of necessity. If such a step is necessary, Minnesota showed its acceptance of a supposed retrocession by its levy of a tax on the property. Under these assumptions the existence of territorial jurisdiction in Minnesota so as to permit state taxation depends upon whether there was a transfer of the property by the contract of sale.

The court concluded that under its contract of sale with the United States, the vendee acquired the equitable title to the land, and that therefore the Federal legislative jurisdiction over the property reverted to the State.

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Of interest in the above-quoted excerpt from the Supreme Court's opinion is the reference to the State's acceptance of the reversion of legislative jurisdiction. As has been indicated in the preceding chapter, the consent of the State and Federal Government is ordinarily essential to effect transfers of legislative jurisdiction from one to the other. However, where--as is suggested in the S.R.A. opinion--the termination of federal ownership and use of the property results in a termination of Federal legislative jurisdiction, it would seem that to add to this rule a proviso that a State must accept such jurisdiction would result, in the event of a State's refusal to accept the reversion, either in the continuance of Federal legislative jurisdiction over an area not owned or used by the Federal Government, or in the creation of a "no-man's land" over which neither the Federal Government nor the State has jurisdiction. It seems highly doubtful in view of these practical results, and barring special circumstances, that the State's acceptance is essential. Moreover, in the S.R.A. opinion, the court seemed to imply that the termination of federal legislative jurisdiction over an area no longer owned or used by the Federal Government rests o constitutional principles. If so, Federal legislative jurisdiction over such area would appear to revert to the State irrespective of the latter's wishes in the matter. In any event the Congress could, for example, expressly provide for reversion of jurisdiction to the State upon cessation of Federal ownership of property, although the S.R.A. decision would seem to make such express provision unnecessary.

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An early Federal statute granting authority for the sale of surplus military sites contained a provision that upon sale of any such site jurisdiction thereover which had been ceded to the Federal

Government by a State was to cease. The statute made no provision for State acceptance of the retrocession. The modern counterpart of this statute, providing for disposition of surplus Federal property, makes no reference whatever to termination of jurisdiction had by the United States over property disposed of thereunder, but the General Services Administration, which administers the existing statute, has no information of any exception to full acceptance by agencies of the Federal and State governments of the theory that all jurisdiction reverts to the State upon Federal disposition of real property under this statute. While the case of S.R.A., Inc. v. Minnesota, supra, is the only case in which the Supreme Court concluded that on the facts presented Federal legislative jurisdiction reverted to the State, the court in several earlier cases indicated that changed circumstances might result in a reversion of legislative jurisdiction. In Benson v. United States, 146 U.S. 325 (1892), the intervening factor was an action of the Executive branch. In that case it was contended that jurisdiction passed to the United States only over such portions of the military reservation as were actually used for military purposes, and that the United States therefore had no jurisdiction over a homicide which was committed on a part of the reservation used for farming purposes. In rejecting this contention, the court said (p. 331):

> * * * But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes. * * * The character and purposes of its occupation having been officially and legally established

> by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put. * * *

The views expressed by the court in the Benson case, which presumably would be applicable to a retrocession as well as a cession, narrow substantially the rule as stated in the excerpt from the Fort Leavenworth case quoted earlier in this chapter.

The Bernson case was followed in Arlington Hotel Co. v. Fant, 278 U.S. 439 (1929), in overruling an argument that jurisdiction was not lodged in the United States over an area leased to a private hotel operator within a reservation over which jurisdiction had been ceded to the United States, and it was again followed in the case of United States v. Unzeuta, 281 U.S. 138 (1930), where the Federal Government was held to have jurisdiction over an area (on which a crime had been committed) constitution a right-of-way over a Federal enclave. The same rule has been applied in other case.

The reluctance of the court to ignore jurisdiction determinations by the Executive branch is further illustrated by its opinion in Phillips v. Payne, 92 U.S. 130 (1876), in which was presented the question of the legal validity of the retrocession by the Federal Government to Virginia of that portion of the District of Columbia which had previously been ceded by Virginia to the Federal Government. In the course of its opinion, the court stated (p. 131) the position of the plaintiff in error that the Federal legislative procedures leading to the

retrocession were "in violation of the Constitution" but it held that (p. 134):

> The plaintiff in error is estopped from raising the point which he seeks to have decided. He cannot, under the circumstances, vicariously raise a question, nor force upon the parties [i.e., the Federal Government and Virginia] to the compact an issue which neither of them desires to make.
>
> In this litigation we are constrained to regard the de facto condition of things which exists with reference to the county of Alexandria as conclusive of the rights of the parties before us.

The position taken by the court in the Benson, Arlington Hotel, Unzeuta, and Phillips cases suggests that the rule announced in the Fort Leavenworth case would not apply in any situation in which the Executive branch has indicated that the area involved, thought presently used for non-Federal purposes, is intended to be used for Federal purposes. Where, of course, a condition in a State cession or consent statute pursuant to which legislative jurisdiction was obtained by the Federal Government provides that jurisdiction shall revert to the State if the areas, or any portion of it, is used, even temporarily, for purposes other than those specified in the State consent or cession statute, full effect would be given to such condition. Absent such express condition in the State consent or cession statute, it seems probable that the courts would conclude that Federal legislative jurisdiction has terminated only upon a clear showing that the area is not only not being used for the purposes for which it was acquired but also that there appears to be no plan to use it for such purpose in the future.

CHAPTER V

CRIMINAL JURISDICTION

RIGHT OF DEFINING AND PUNISHING FOR CRIMES: Exclusive Federal jurisdiction.--Areas over which the Federal Government has acquired exclusive legislative jurisdiction are subject to the exclusive criminal jurisdiction of the United States. Bowen v. Johnston, 306 U.S.19 (1939); United States v. Watkins, 22 F.2d 437 (N.D.Cal 1927). That the States can neither define nor punish for crimes in such areas is made clear in the

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case of In re Ladd, 74 Fed. 31 (C.C.N.D.Neb., 1896), (p. 40):

> * * * The cession of jurisdiction over a given territory takes the latter from within, and places it without, the jurisdiction of the ceding sovereignty. After a state has parted with its political jurisdiction over a given tract of land, it cannot be said that acts done thereon are against the peace and dignity of the state, or are violations of its laws; and the state certainly cannot claim jurisdiction criminally be reason of acts done at place beyond,or not within, its territorial jurisdiction, unless by treaty or statute it may have retained jurisdiction over its own citizens, and even then the jurisdiction is only over the person as a citizen. * * *

The criminal jurisdiction of the Federal Government extends to private land over which legislative jurisdiction has been vested in the Government, as well as to federally owned lands. United States v. Unzenuta, supra; see also Petersen v. United States, 191 F.2d 154 (C.A. 9, 1951), cert.den., 342 U.S. 885. Indeed, the Federal Government's power derived from exclusive legislative jurisdiction over an area may extend beyond

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the boundaries of the area, as may be necessary to make exercise of the Government's jurisdiction effective; thus, the Federal Government may punish a person not in the exclusive jurisdiction area for concealment of his knowledge concerning the commission of a felony within the area. Cohens v. Virginia, 6 Wheat. 264, 426-429 (1821).

In Hollister v. United States, 145 Fed. 773 (C.A. 8, 1906), the court said (p. 777):

> Instances of relinquishment and acceptance of criminal jurisdiction by state Legislatures and the national Congress, respectively, over forts, arsenals, public buildings, and other

> property of the United States situated within the states, are common, and their legality has never, so far as we know, been questioned.

On the other hand, while the Federal Government has power under various provisions of the Constitution to define, and prohibit as criminal, certain acts or omissions occurring anywhere in the United States, it has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crimes occur on areas as to which legislative jurisdiction has been vested in the Federal Government. The absence of jurisdiction in a State, or in the Federal Government, over a criminal act occurring in an area as to which only the other of these governments has legislative jurisdiction is demonstrated by the case of United States v. Tully, 140 Fed. 899 (C.C.D.Mont.,

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1905). Tully had been convicted by a State court in Montana of first degree murder, and sentenced to be hanged. The Supreme Court of the State reversed the conviction on the ground that the homicide had occurred on a military reservation over which exclusive jurisdiction was vested in the Federal Government. The defendant was promptly indicted in the Federal court, but went free as the result of a finding that the Federal Government did not have legislative jurisdiction over the particular land on which the homicide had occurred. The Federal court said (id. p. 905):

> It is unfortunate that a murderer should go unwhipped of justice, but it would be yet more unfortunate if any court should assume to try one charged with a crime without jurisdiction over the offense. In this case, in the light of the verdict of the jury in the state court, we may assume that justice would be done the defendant were he tried and convicted by any court and executed pursuant to its judgment. But in this court it would be the justice of the vigilance committee wholly without the pale of the law. The fact that the defendant is to be discharged may furnish a text for the thoughtless or uninformed to say that a murderer has been turned loose upon a technicality; but this is not a technicality. It goes to the very right to sit in judgment. * * * These sentiments no doubt appealed with equal force to the Supreme Court of Montana, and it is to its credit that it refused to lend its aid to the execution of one for the commission of an act which, in its judgment, was not cognizable under the laws of its state; but I cannot being myself to the conclusion reached by that able court, and it is upon the judgment and conscience of this court that the matter of jurisdiction here must be decided.

The United States and each State are in many respects separate sovereigns, and ordinarily one cannot enforce the laws of the other.

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> State and local police have no authority to enter an exclusive

Federal area to make investigations, or arrests, for crimes committed within such areas since Federal, not State, offenses are involved. Only Federal law enforcement officials, such as representatives of the Federal Bureau of Investigation and United States marshals and their deputies, would be authorized to investigate such offenses and make arrests in connection with them. The policing of Federal exclusive jurisdiction areas must be accomplished by Federal personnel, and an offer of a municipality to police a portion of a road on such an area could not be accepted by the Federal official in charge of the area, as police protection by a municipality to such an area would be inconsistent with Federal exclusive jurisdiction.

Concurrent Federal and State criminal jurisdiction.--There are, of course, Federal areas as to which a State, in ceding legislative jurisdiction to the United States, has reserved some measure of jurisdiction, including criminal jurisdiction, concurrently to itself. In general, where a crime has been committed in an areas over which the Untied States and a State have concurrent criminal jurisdiction, both governments may try the accused without violating the double jeopardy clause of the Fifth Amendment. Grafton v. United States, 206 U.S.

333 (1907), held that the same acts constituting a crime cannot, after a defendant's acquittal or conviction in a court of competent jurisdiction of the Federal Government, be made the basis of a second trial of the defendant for that crime in the same or in another court, civil or military, of the same government. However, where the same act is a crime under both State and Federal law, the defendant may be punished under each of them. Hebert v. Louisiana, 272 U.S. 312 (1926). It was stated by the court in United States v. Lanza, 260 U.S. 377 (1922), (p. 382):

> It follows that an act denounced as a crime by both national and state sovereignties is an offence against the peace and dignity of both and may be punished by each. The Fifth Amendment, like all the other guaranties in the first eight amendments, applies only to proceedings by the Federal Government, Barron v. Baltimore, 7 Pet. 243, and the double jeopardy therein forbidden is a second prosecution under authority of the Federal Government after a first trial for the same offense under the same authority. * * *

It is well settled, of course, that where two tribunals have concurrent jurisdiction that which first takes cognizance of a matter has the right, in general, to retain it to a conclusion, to the exclusion of the other. The rule seems well stated in Mail v. Maxwell, 107 Ill. 554 (1883),(p. 561):

> Where one court has acquired jurisdiction, no other court, State or Federal, will, in the absence of supervising or appellate jurisdiction, interfere, unless in pursuance of some statute, State or Federal, providing for such interference.

Other courts have held similarly. There appears to be some doubt concerning the status of a court-martial as a court, within the meaning of the Judicial Code, however.

Law enforcement on areas of exclusive or concurrent jurisdiction.--The General Services Administration is authorized by statute to appoint its uniformed guards as special policemen, with the same powers as sheriffs and constables to enforce Federal laws enacted for the protection of persons and property, and to prevent beaches of the peace, to suppress affrays or unlawful assemblies, and to enforce rules made by the General Services Administration for properties under its jurisdiction; but the policing powers of such special policemen are restricted to Federal property over which the United States has acquired exclusive or concurrent jurisdiction. Upon the application of the head of any Federal department or agency having property of the United States under its administration or control and over which the United States has exclusive or concurrent jurisdiction, the General Services Administration is authorized by statute to detail any such special policeman for the protection of such property and, if it is deemed desirable, to extend to such property the applicability of regulations governing property promulgated by the General Services Administration. The General Services Administration is authorized by the same statute to utilize the facilities of existing Federal law-enforcement agencies, and, with the consent of any State or local agency, the facilities and services of such State or local law enforcement agencies.

Although the Department of the Interior required protection for an installation housing important secret work, the General

Services Administration was without authority to place uniformed guards on the premises in the absence in the United States of exclusive or concurrent jurisdiction over the property, and notwithstanding the impropriety of permitting the policing of the property by local officials, if they were willing, without necessary security clearances.

Civilian Federal employees may be assigned to guard duty on Federal installations, but there is no Federal statue (other than that appertaining to General Services Administration and three statutes of even less effect--16 U.S.C. 559 (Forest Service), and 16 U.S.C. 10 and 10a (National Park Service)) conferring any special authority on such guards. They are not peace officers with the usual powers of arrest; and have no greater powers of arrest than private citizens. As citizens, they may protect their own lives and property and the safety of others, and as agents of the Government they have a special right to protest the property of the Government. For both these purposes they may bear arms irrespective of State law against bearing arms. Such guards, unless appointed as deputy sheriffs (where the State has at least concurrent criminal jurisdiction), or deputy marshals (where the United States has at least concurrent criminal jurisdiction), have no

more authority than other private individuals so far as making arrests is concerned.

State and local officers may, by special Federal statute, preserve the peace and make arrests for crimes under the laws of States, upon immigrant stations, and the jurisdiction of such officers and of State and local courts has been extended to such stations for the purposes of the statute.

Partial jurisdiction.--In some instances States in granting to the Federal Government a measure of exclusive legislative jurisdiction over an area have reserved the right to exercise, only by themselves, or concurrently by themselves as well as by the Federal Government, criminal jurisdiction over the area. In instances of complete State retention of criminal jurisdiction, whether with respect to all matters or with respect to a specified category of matters, the rights of the States, of the United States, and of any defendants, with respect to crimes as to which State jurisdiction is so retained are as indicated in this chapter for areas as to which the Federal Government has no criminal jurisdiction. In instances of concurrent State and Federal criminal jurisdiction with respect to any matters the rights of all parties are, of course, determined with respect to such matters according to the rules of law generally applicable in areas of concurrent jurisdiction. Accordingly, there is no

body of law specially applicable to criminal activities in areas under the partial legislative jurisdiction of the United States.

State criminal jurisdiction retained.--State criminal jurisdiction extends into areas owned or occupied by the Federal Government, but as to which the Government has not acquired exclusive legislative jurisdiction with respect to crimes. And as to many areas owned by the Federal Government for its various purposes it has not acquired legislative jurisdiction. The Forest service of the Department of Agriculture, for example, in accordance with a provision of Federal law (16 U.S.C. 480), has not accepted the jurisdiction proffered by the statutes of many States, and the vast majority of Federal forest lands are held by the Federal Government in a proprietorial status only.

The Federal Government may not prosecute for ordinary crimes committed in such areas. Federal civilians who may

be appointed as guards in the areas do not have police powers, but possess only the powers of arrest normally had by any citizen unless they receive appointments as State or local police officers.

Acts committed partly in area under State jurisdiction.--Where a crime has been in part committed in a Federal exclusive legislative jurisdiction area, the States in some instances have asserted jurisdiction. It was held in Commonwealth v. Rohrer, 37Pa. D. and C. 410 (1937), that a dealer furnishing milk for use at a veterans' hospital was subject to the provisions of the Milk Control Board Law. The court was of the opinion that while the

State had no jurisdiction with respect to a crime committed wholly within the area over which legislative jurisdiction had been ceded to the Federal Government for the hospital, it did have jurisdiction of a crime the essential elements of which were committed within the State, even though other elements thereof were committed within the ceded territory. Two more recent decisions of the Supreme Court (i.e., Penn Dairies, Inc., et al. v. Milk Control Commission of Pennsylvania, 318 U.S. 261 (1943), and Pacific Coast Dairy, Inc. v. Department of Agriculture of California, 318 U.S. 285 (1943)) suggest that only where the federal Government does not have exclusive legislative jurisdiction would a State have such authority. It has been held, however, that even where acts are done wholly on Federal property, a State property, a State prosecution is proper where the effects of the acts are felt in an area under State jurisdiction. People v. Commonwealth Sanitation Co., 1007 N.Y.S.2d 982 (1951); cf. State v. Kelly, 76 Me. 331 (1884).

On the other hand, transportation through a State for delivery to an area, within the boundaries of the State, which is

under the exclusive jurisdiction of the United States has been held not to be a violation of laws prohibiting the importation into the State of the matter transported.

Retrial on change in jurisdiction.--Where a person is convicted of a crime in a State court and the territory in which the crime was committed is subsequently ceded to the United States, he may be properly retried or sentenced in the State court, it was held in Commonwealth v. Vaughn, 64 Pa. D & C. 320 (1948). The court said (p. 322):

> * * * The act when done was a violation of the law of this Commonwealth which is still in full force and effect, done within its territorial jurisdiction; the Commonwealth had jurisdiction of the subject matter and obtained jurisdiction of the person by proper process, and its proper officer proceeded with legal action in the proper court, which court has never relinquished its jurisdiction, so obtained. * * * When the jurisdiction of a court has legally and properly attached to the person and subject matter in a legal proceeding, such jurisdiction continues until the cause is fully an completely disposed of * * *.

The court points out that if the subject matter (in this case, the crime) is wiped out the court loses its jurisdiction. The crime would no longer exist and no one can be punished for a crime which does not exist at time of trial therefor, or of meting out punishment.

SERVICE OF STATE CRIMINAL PROCESS: In general.--That State criminal process may extend into areas owned or occupied by the United States but not under its legislative jurisdiction is well set out in the case of Cockburn v. Willman, 301 Mo. 575, 257 S.W. 458 (1923), (p. 587):

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The mere fact that he was territorial within the confines of a Government reservation at the time the warrant was served upon him did not render him immunity exists only when it appears in the cession by the State to the National Government that the former has divested itself of all power over the place or territory in regard to the execution of process or the arrest and detention of persons found thereon who are charged with crime.

Right by Federal grant.--The immunity of persons in areas under the exclusive jurisdiction of the federal Government from service upon them of State process occasioned great concern at the constitutional ratifying conventions that such areas might become havens for felons. At an early date, Congress provided that in lighthouse and certain related areas criminal and civil process might be served by the States notwithstanding the acquisition of exclusive jurisdiction by the Federal Government over such sites.

Right by State reservation.--States have commonly included in their consent and cession statutes a reservation of the power to serve civil and criminal process in the areas to which such statutes relate, and all such State statutes which are currently in effect contain such reservations. The words of reservation vary, but usually are contained in a clause following the cession language and are worded approximately as follows:

* * * this state, however, reserving the right to execute

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its process, both criminal and civil, within such territory.

Reservations to serve process not inconsistent with exclusive jurisdiction.--The reservation by a State of the right to serve criminal and civil process in an area over which such Federal jurisdiction exists is not, however, inconsistent with the exercise by the Federal Government of exclusive jurisdiction over the area, and a State does not by such a reservation acquire jurisdiction to punish for a crime committed within a ceded area. United States v. Travers, 28 Fed. Cas. 204, No. 16,537 (C.C.D.Mass., 1814); United States v. Davis, 25 Fed. cas. 646, No. 14,867 (C.C.D.R.I., 1819). Indeed, it has been said that process served under a reservation becomes, quo ad hoc, process of the United States, and that when a State officer acts to execute process on a Federal enclave he acts under the authority of the United States, but these statements appear inconsistent with the generally prevailing view of reservations to serve process as retention by the State of its sovereign authority. Even, as is often the case, where a State retains "concurrent jurisdiction," to serve civil

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and criminal process, or the right to serve such process as if jurisdiction over lands "had not been ceded," the quoted words have been construed not to give the State jurisdiction to punish persons

for offenses committed within the ceded territory. United States v. Cornell, 25 Fed. Cas. 646, No. 14,867 (C.C.D.R.I., 1819); Lasher v. State, 30 Tex. Cr.App. 387 17 S.W. 1064 (1891); Commonwealth v. Clary, 8 Mass. 72 (1811). In the Cornell case, supra, the United States purchased certain lands in Rhode Island for military purposes. The State gave its consent to these purchases, reserving, however, the right to execute all civil and criminal processes on the ceded lands, in the same way as if they had not been a reservation of concurrent jurisdiction by the State. The court answered this in the negative as follows (pp. 648-649):

> In its terms it certainly does not contain any reservation of concurrent jurisdiction or legislation. It provides only that civil and criminal processes, issued under the authority of the state, which must of course be for acts done within, and cognizable by, the state, may be executed within the ceded lands, notwithstanding the cession. Not a word is said from which we can infer that it was intended that the state should have a right to punish for acts done within the ceded lands. The whole apparent object is answered by considering the clause as meant to prevent these lands from becoming a sanc-

> tuary for fugitives from justice, for acts done within the acknowledged jurisdiction of the state. Now there is nothing incompatible with the exclusive sovereignty or jurisdiction of one state, that it should permit another state, in such cases, to execute its processes within its limits * * *.

And reservation of right to "execute" process, it has been held, retains no more authority in the State than a reservation to "serve" process, even in the absence of the word "exclusive" in the description of the quantum of jurisdiction ceded to the United States. Rogers v. Squier, F.2d 948 (C.A. 9, 1946), cert. den., 330 U.S. 840.

The Supreme Court of Nevada has held (State ex rel. Jones v. Mack, 23 Nev. 359, 47 Pac. 763 (1897)) that exception from a cession of the "administration of the criminal laws" reserved to the State only the right to serve process, and a similar holding with respect to a similar California statute was once made by a Federal court; but at least on five occasions Attorneys General of the United States have ruled that such language gave a State cognizance of criminal offenses against its laws in the place ceded. It has also been held that a reservation to serve process for "any cause there [in the ceded area] or elsewhere in the state arising, where such cause comes properly under the jurisdiction of the laws of this state," merely reserved he right to serve process, and was not inconsistent with a transfer of exclusive jurisdiction.

In People v. Hillman, 246 N.Y. 467, 159 N.E. 400 (1927), it was held that the courts of the State of New York had no jurisdiction over a robbery committed on a highway which passed through the West Point Military Reservation. Ownership of the land had been acquired by the United States, and the State had ceded jurisdiction over the land, reserving the

right to serve civil and criminal process thereon and the right of occupancy of the highways. The latter reservation, the court said, should not be construed as a reservation of political dominion and legislative authority over the highways but meant merely that the State reserved the right to appropriate for highway purposes the customary proportion of land embraced in the tract.

Warrant of arrest deemed process.--By the very nature of the purposes which the State reservations to serve criminal and civil process were intended to carry out, such reservations include the right to execute a warrant of arrest, including a warrant issued on a request for extradition. Such warrants are a form of legal process. However, various Federal instrumentalities have regulations governing the manner in which such process shall be served, and even in the absence of formal regulations on the subject, the service of process may

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not be accomplished in manner such as to constitute an interference with an instrumentality of the Federal Government.

Arrest without warrant not deemed service of process.--It has been held that an arrest without a warrant may not be effected by a State police officer in an area under exclusive Federal jurisdiction, for a crime committed off the area, since such an arrest does not involve service of process. A reservation to make such arrest might, of course, be made. State officials may enter an exclusive Federal jurisdiction area, to make an investigation related to an offense committed off the area, only in manner such as will not interfere with an instrumentality of the Federal Government, and in accordance with any Federal regulations for this purpose.

Coroner's inquest.--Various authorities have held that a State cannot render coroner service in an area under exclusive Federal jurisdiction, but in an early case (County of Allegheny v. McClung, 53 Pa. 482 (1867)), it was suggested that a coroner's inquest might constitute criminal process.

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Writ of habeas corpus.--In three early cases a reservation of the right to serve process was construed as giving authority to a State to serve a writ of habeas corpus upon a federal military officer with respect to his alleged illegal detention, under color of Federal authority, of a person upon a Federal enclave (State v. Dimick, 12 N.H. 194 (1841); In re Carlton, 7 Cow. 471 (N.Y., 1827); and Commonwealth v. Cushing, 11 Mass. 67 (1814))> The lack of jurisdiction is State courts to inquire by habeas corpus into the propriety of the confinement of persons held under the authority or color of authority of the United States has since been firmly fixed and confirmed. Ableman v. Booth, 21 How. 506 (1859), In re Tarble, 13 Wall. 397 (1871), Johnson v. Eisentrager, 339 U.S. 763 (1950). Nor, it would seen, may a writ of habeas corpus out of a State court in any case lie under the usual State reservation to serve process with reference to a person held in an area under exclusive Federal jurisdiction, although his holding be not under Federal

authority (e.g., the holding of a child by an adult claiming parental authority), since such a reservation permits service only with respect to matters arising outside the exclusive jurisdiction area. It has been held, on the other hand, that a writ of habeas corpus properly might issue from a Federal court to discharge from the custody of a State official a prisoner held for a crime indicated to have been committed in an area which, while within the State, was under the exclusive legislative jurisdiction of the United States. Ex parte Tatem, 23 Fed. Cas. 708, No. 13,759 (E.D.Va., 1877). The court issued the writ reluctantly in the Tatem case, however, and in In re Bradley, 96 Fed. 969 (C.C.S.D.Cal., 1898), the court said (p. 970):

> Unquestionably, the circuit and district courts of the United States may, on habeas corpus, discharge from custody one who is restrained of his liberty in violation of the constitution of the United States, even though

> he is so restrained under state process to answer for an alleged crime against the state. Rev. St. Sec. 753. This power, however, in the federal judiciary, "to arrest the arm of the state authorities, and to discharge a person held by them, is one of great delicacy" (Ex parte Thompson, 23 Fed. Cas. p. 1016), and ought not to be exercised in any case where suitable relief can be had through the regular procedure of the state tribunals * * *.

The court said further (p. 971):

> Assuming--without, however, deciding--that the allegations of the petition, in the case at bar, show, that the imprisonment of the petition is without due process of law, and violative of the federal constitution, they do not, as held in Ex parte Royall, supra, "suggest any reason why the state court of original jurisdiction may not, without interference upon the part of the courts of the United States, pass upon the question which is raised," as to the lack of jurisdiction in the state government over the land or place in question.

The Supreme Court has ruled that whether the United States had exclusive legislative jurisdiction over land where an alleged crime was committed is to be determined by the court to which the indictment was returned,, and no by writ of habeas corpus in connection with proceedings for the removal of the accused from another jurisdiction for trial. Rodman v. Pothier, 264 U.S. 399 (1924). Presumable this rule would apply to extradition as well as to removal proceedings.

FEDERAL CRIMES ACT OF 1790: Effects limited.--Among the problems which early resulted from the creation of Federal enclaves was that of the administration of criminal law over these areas. Once these areas were withdrawn from State jurisdiction, in the absence of congressional legislation they were left without criminal law. Congress, in order to correct this situ-

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ation, passed the first Federal Crimes Act, in 1790. However, this act defined only the more serious crimes, such as murder, manslaughter, maiming, etc., punishing their commission in areas under the "sole and exclusive jurisdiction of the United States." Persons who committed other offenses in these areas escaped unpunished.

The gravity of the situation was indicated by Joseph Story in his comment on a bill which he wrote inn 1816 "to extend the judicial system of the United States." He stated, in part, as follows:

> * * * Few, very few of the practical crimes, (if I may so say,) are now punishable by statutes, and if the courts have no general common law jurisdiction (which is a vexed question,) they are wholly dispunishable. The State Courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes, may in these p;aces be now committed with impunity. Surely, in naval yards, arsenals, forts, and dockyards, and on the high seas, a common law jurisdiction is indispensable. Suppose a conspiracy to commit treason in any of these places, by civil persons, how can the crime be punished? These are cases where the United States have an exclusive local jurisdiction. And can it be less fit that the Government should have power to protect itself in all other places where it exercises a legitimate authority? That Congress have power to provide for all crimes against the United States, is incontestable. * * *

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These Federal areas within the States over which Congress had exclusive jurisdiction had become, it would seem from Story's comment, a criminals' paradise. The act of 1790, supra, defining and punishing for certain crimes on such areas left many grossly reprehensible acts undefined and unpunished, the States no longer had jurisdiction over these areas, and the Federal courts had no common law jurisdiction.

ASSIMILATIVE CRIMES STATUTES: Assimilative Crimes Act of 1825.-- In order, therefore, to provide a system of criminal law for ceded areas, Congress, in 1825, passed the first assimilative crimes statute. This was section 3 of the act of March 3, 1825, 4 Stat. 115, which provided:

> AND BE IT FURTHER ENACTED, That, if any offence shall be committed in any of the places aforesaid, the punishment of which offence is not specially provided for by any law of the United States, such offence shall, upon a conviction in any court of the United States having cognisance thereof, be liable to, and receive the same punishment as the laws of the state in which such fort, dock-yard, navy-yard, arsenal, armory, or magazine, or other place, ceded as aforesaid, is situated, provide for the like offence when committed within the body of any county of such state.

Mr. Webster, who sponsored this bill,is indicated to have explained the purpose of its third section as follows (register of

Debates in Congress, 18th Cong., 2d Sess., Jan. 24, 1825, Gales & Seaton, Vol. I, p. 338):

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> * * * it must be obvious, that, where the jurisdiction of a small place, containing only a few hundreds of people, (a navy yard for instance,) was ceded to the United States, some provision was required for the punishment of offences; and as, from the use to which the place was to be put, some crime were likely to be more frequently committed than others, the committee had thought it sufficient to provide for these, and then to leave the residue to be punished by the laws of the state in which the yard, &c. might be. He [Webster] was persuaded that the people would not view it as an hardship, that the great class of minor offences should continue to be punished in the same manner as they had been before the cession.

In United States v. Davis, decided in 1829, the court stated the purpose of the act of 1825, at page 784:

> The object of the act of 1825 was to provide for the punishment of offences committed in places under the jurisdiction of the United States, where the offence was not before punishable by the courts of the United States under the actual circumstances of its commission. * * *

The act of 1825 was construed by the Supreme Court in United States v. Paul, 6 Pet. 141 (1832). An act of 1829 of the New York legislature was held not to apply under the Assimilative Crimes Act to the West Point Military Reservation, situated in the State of New York. Chief Justice Marshall ruled that the act of 1825 was to be limited to the adoption of States laws in effect at the time of its enactment. Any State laws enacted after March 3, 1825, could not be adopted by the act and would therefore be of no effect in a Federal enclave. It appeared, therefore, that the assimilative crimes statute would have to be re-enacted periodically in order to keep the criminal laws of Federal enclaves abreast with State criminal laws.

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In United States v. Barney, 24 Fed. Cas. 1011, No. 14,524 (C.C.S.D.N.Y., 1866), the court held that the act of 1825 applied only to those places which were under the exclusive jurisdiction of the United States at the time the act was passed. Therefore, the act would not apply to any areas ceded to the Federal Government by the States after March 3, 1825. It was similarly apparent then that any areas ceded by the States to the Federal Government after the date of the act of 1825 were left without criminal law except as to those few offenses defined in the Federal Crimes Act of 1790, supra.

Assimilative Crimes Act of 1866.--The Paul case limited the act as to time, and the Barney case as to place. The Congress completely remedied the situation brought about by the Barney case, and alleviated the problems raised by the Paul case, by the act of

April 5, 1866 (14 Stat. 12, 13), re-enacting an Assimilative Crimes Act. This law extended the act to "any place which has been or shall hereafter be ceded" to the United States. It also spelled out what had in any event probably been the law--that no subsequent repeal of any State penal law should affect any prosecution for such offense in any United States court. Accordingly, though a State penal law was re-pealed that law still remained as part of the Federal criminal code for the Federal area.

Re-enactments of Assimilative crimes Act, 1898-1940.--The next re-enactment of the Assimilative Crimes Act came on July 7, 1898 (30 Stat. 717). The constitutionality of the 1898 act was sustained in Franklin v. United States, 216 U.S. 559 (1910), writ of error dism., 220 U.S. 624. This case held that the act did not delegate to the States authority in any way to change the criminal laws applicable to places over which the United States had jurisdiction, adopting only the State law in exist-

ence at the time the 1898 act was enacted, and that the act was not an unconstitutional delegation of authority be Congress.

The following statements were made by Chief Justice White in United v. Press Publishing Company, 219 U.S. 1 (1911), referring to the 1898 statute (page 9):

> It is certain, on the face of the quoted section, that it exclusively relates to offenses committed on United States reservations, etc., which are "not provided for by any law of the United States," and that as to such offenses the state law, when they are by that law defined and punished, is adopted and made applicable. That is to say, while the statute leaves no doubt where acts are done on reservations which are expressly prohibited and punished as crimes by a law of the United States, that law is dominant and controlling, yet, on the other hand, where no law of the United States has expressly provided for the punishment of offenses committed on reservations, all acts done on such reservations which are made criminal by the laws of the several States are left to be punished under the applicable state statutes. When these results of the statute are borne in mind it becomes manifest that Congress, in adopting it, sedulously considered the two-fold character of our constitutional government, and had in view the enlightened purpose, so far as the punishment of crime was concerned, to interfere as little as might be with the authority of the States on that subject over all territory situated within their exterior boundaries, and which hence would be subject to exclusive state jurisdiction but for the existence of a United States reservation. In accomplishing these purposes it is apparent that the statute, instead of fixing by its own terms the punishment for crimes committed on such reservations which were not previously provided for by a law of the United States, adopted and wrote in the state law, with the single difference that the offense,

> although punished as an offense against the United States, was nevertheless punishable only in the way and to the extent that it would have been punishable if the territory embraced by the reservation remained subject to the jurisdiction of the State. * * *

The Assimilative Crimes Act of 1898 became section 289 of the Criminal Code by the act of March 4, 1909 (35 Stat. 1088). In referring to section 289 the court, in Puerto Rico v. Shell Co., 302 U.S. 253 (1937), said (page 266):

> Prosecutions under that section, however, are not to enforce the laws of the state, territory or district, but to enforce the federal law, the details of which, instead of being recited, are adopted by reference.

The constitutionality of the act was upheld in Washington, P. and C. Ry. v. Magruder, 198 F. 218 (D.Md., 1912). The court said (p. 222):

> Congress may not empower a state Legislature to create offenses against the United States or to fix their punishment. Congress may lawfully declare the criminal law of a state as it exists at the time Congress speaks shall be the law of the United States in force on particular portions of the territory of the United States subject to the latter's exclusive criminal jurisdiction. * * *

Section 289 of the Criminal Code was subsequently reenacted on three occasions:

> 1. Act of June 15, 1933, 48 Stat. 152, adopting State laws in effect on June 1, 1933. 2. Act of June 20, 1935, 49 Stat. 394, adopting State laws in effect on April 1, 1935. 3. Act of June 6, 1940, 54 Stat. 234, adopting State laws in effect on February 1, 1940.

Subsequently the act of June 11, 1940 (54 Stat. 304), extended the scope and operation of the assimilative crimes statute by amending section 272 of the Criminal Code so that the criminal statutes set forth in chapter 11, title 18, United States Code, including the assimilative crimes statute, applied to lands under the concurrent as well as the exclusive jurisdiction of the United States.

Assimilative Crimes Act of 1948.--The present assimilative crimes statute was enacted on June 25, 1948, in the revision and codification into positive law of title 18 of the United States Code. It now constitutes section 13 of title 18 of the Code, and reads as follows:

> Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State,

> Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

Section 7 of title 18, United States Code, referred to in section 13, merely defines the term "special maritime and territorial jurisdiction of the United States," in pertinent part as follows:

> (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

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The language of the present assimilative crimes statute, it may be noted, does away with the requirement for further periodic re-enactment of the law to keep abreast with changes in State penal laws. The words "by the laws thereof in force at the time of such act or omission" make such re-enactments unnecessary. The previously existing section 289 of the Criminal Code, through its several re-enactments, supra, need, "by the laws thereof, now in force." Accordingly, under the language of the present statute the State law in force at the time of the act or omission governs if there was no pertinent Federal law. All changes, modifications and repeals of State penal laws are adopted by the Federal Criminal Code, keeping the act up to date at all times.

INTERPRETATIONS OF ASSIMILATIVE CRIMES ACT: Adopts State law.--It is emphasized that the Assimilative Crimes Act adopts the State law. The Federal courts apply not State penal laws, but Federal criminal laws which have been adopted by reference.

Operates only when offense is not otherwise defined.--The Assimilative Crimes Act operates only when the Federal Criminal Code has not defined a certain offense or provided for its punishment. Furthermore, when an offense has been defined and prohibited by the Federal code the assimilative crimes statute cannot be used to redefine and enlarge or narrow the scope of the Federal offense. The law applicable in this

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matter is clearly set out in Williams v. United States, 327 U.S. 711 (1946), (p. 717):

> We hold that the Assimilative Crimes Act does not make the Arizona statute applicable in the present case because (1) the precise acts upon which the conviction depends have been made penal by the laws of congress defining adultery and (2) the offense known to arizona as that of "statutory rape" has been defined and prohibited by the Federal Criminal Code, and is not to be redefined and enlarged by application to it of the Assimilative Crimes Act. The fact that the definition of this

> offense as enacted by Congress results in a narrower scope for the offense than that given to it by the State, does not mean that the congressional definition must give way to the State definition. * * * The interesting legislative history of the Assimilative Crimes Act discloses nothing to indicate that, after Congress has once defined a penal offense, it has authorized such definition of it. It has not even been suggested that a conflicting State definition could give a narrower scope to the offense than that given to it by Congress. We believe that, similarly, a conflicting State definition does not enlarge the scope of the offense defined by Congress. The Assimilative Crimes Act has a natural place to fill through its supplementation of the Federal Criminal Code, without giving it the added effect of modifying or repealing existing provisions of the Federal Code.

The Assimilative Crimes Act has a certain purpose to fulfill and its application should be strictly limited to that purpose. On the other hand, it has been applied when there has been the slightest gap in Federal law. In Ex parte Hart, 157 Fed. 130 (D.Ore, 1907) the court, in interpreting the act of July 7, 1898, said (p. 133):

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> When, therefore, section 2 declares that when any offense is committed in any place, the punishment for which is not provided for by any law of the United States, it comprehends offenses created by Congress where no punishment is prescribed, as well as offenses created by state law, where none such is inhibited by Congress. So that the latter section is as comprehensive and far-reaching as the former, and is in practical effect the same legislation.

Includes common law.--It has also been held that the Assimilative Crimes Act adopted not only the statutory laws of a State, but also the common law of the State as to criminal offenses. United States v. Wright, 28 Fed. Cas. 791, No. 16,774 (D. Mass., 1871).

Excludes statute of limitations.--The Assimilative Crimes Act does not, however, incorporate into the Federal law the general statute of limitations of a State relating to crimes; question on this matter arose in United States v. Andem, 158 Fed. 996 (D.N.J., 1908), where the court held that the Federal statute of limitations would apply, the State statute of limitations being a different statute from that which defined the offense.

Excludes law on sufficiency of indictments.--In McCoy v. Pescor, 145 F.2d 260 (C.A. 8, 1944), cert. den., 324 U.S. 868 (1945), question arose as to the sufficiency of Federal indictments under a Texas statute adopted by the Assimilative Crimes Act. The court held (p. 262):

> Petitioner argues that the question here is controlled by the decisions of the Texas courts regarding the sufficiency of indictments under the adopted Texas statute. * * * The Texas decisions, however, are not controlling. Prosecutions under 18 U.S.C.A. Sec. 468, "are not to enforce the laws of the state,

territory, or district,

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but to enforce the federal law, the details of which, instead of being recited, are adopted by reference." * * *

This is amplified in a discussion concerning the Assimilative Crimes Act in 22 Calif.L.Rev. 152 (1934).

Offenses included.--The overwhelming majority of offenses committed by civilians on areas under the exclusive criminal jurisdiction of the United States are petty misdemeanors (e.g., traffic violations,drunkenness). Since these are not define them by regulations is limited to a few Federal administrators, their commission usually can be punished only under the Assimilative Crimes Act. The act also has invoked to cover a number of serious offenses defined by State, but not Federal law.

Offenses not included.--The Assimilative Crimes act will not operate to adopt any State penal statutes which are in conflict with Federal policy as expressed by acts of Congress or by valid administrative regulations. In Air Terminal Services, Inc. v. Rentzel, 81 F.Supp. 611 (E.D.Va., 1949), a Virginia statute provided for segregation of white and colored races in places of public assemblage and entertainment. A regulation of the Civil Aeronautics Administrator prohibited segregation at the Washington National airport located in Virginia. The airport was under the exclusive criminal jurisdiction of the United States. The question presented was whether the Virginia statute was adopted by the Assimilative Crimes Act, thus rendering the Administrator's regulation invalid. The court held, at page 612:

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The fundamental purpose of the assimilative crimes act was to provide each Federal reservation a criminal code for its local government; it was intended "to use local statutes to fill in gaps in the federal Criminal Code." It is not to be allowed to override other "federal policies as expressed by Acts of Congress" or by valid administrative orders, Johnson v. Yellow Cab Co., 321 U.S. 383, * * * and one of those ""federal policies" has been the avoidance of race distinction in Federal matters. Hurd v. Hodge, 334 U.S. 24, 34, 68 S.Ct. 847. The regulation of the Administrator, who was authorized by statute, Act of June 29, 1940, 54 Stat. 686, to promulgate rules for the Airport, is but an additional declaration and effectuation of that policy, and therefore its issuance is not barred by the assimilative crimes statute.

In Nash v. Air Terminal Services, Inc., 85 F.Supp. 545 (E.D.Va., 1949), decided on the basis of facts existing before the Administrator's regulation was issued, it was held that the Virginia segregation statute had been adopted by the Assimilative Crimes Act, and did apply to the National Airport. However, it was held that once the regulation was promulgated the State statute was no longer enforceable at the airport. The court said (p. 548):

> Too, the court is of the opinion that the Virginia statute already cited was then applicable to the restaurants and compelled under criminal penalties the separation of the races. The latter became a requirement of the federal law prevailing on the airport, by virtue of the Assimilative Crimes Act, supra, and continued in force until the promulgation, on December 27, 1948, by the Administrator of Civil Aeronautics of his regulation expressing a different policy. * * *

When lands are acquired by the United States in a State for a Federal purpose, such as the erection of forts, arsenals or other public buildings, these lands are free, regardless of their

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legislative jurisdictional status, from such interference of the State as would destroy or impair the effective use of the land for the Federal purpose. Such is the law with reference to all instrumentalities created by the Federal Government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of its delegated powers. Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885); James v. Dravo Contracting Company, 302 U.S. 134 (1937).

In providing for the carrying out of the functions and purposes of the Federal government, Congress on numerous occasions has authorized administrative officers or boards to adopt regulations to effect the will of Congress as expressed by Federal statutes. For example, the Secretary of the Interior is authorized to make rules and regulations for the management of parks, monuments and reservations under the jurisdiction of the National Park Service (16 U.S.C. 551); the Administrator of General Services is authorized to make regulations governing the use of Federal property under his control (40 U.S.C. 31a); and the head of each Department of the Government is authorized to prescribe regulations, not inconsistent with laws, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it (5 U.S.C. 22). The law is well settled that any such regulation must meet two fundamental tests: (1) it must be reasonable and appropriate (Manhattan Co. v. Commissioner, 297 U.S. 129, 134 (1936); International Ry. v. Davidson, 257 U.S. 506, 514 (1922); Commissioner of Internal

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Revenue v. Clark, 202 F.2d 94, 98 (C.A. 7, 1953); Krill v. Arma Corporation, 76 F.Supp. 14 17 (E.D.N.Y., 1948)), and (2) it must be consistent not only with the statutory source of authority, but with the other Federal statutes and policies (Manhattan Co. v. Commissioner, supra; International Ry. v. Davidson, supra; Johnson v. Keating, 17 F.2d 50, 52 (C.A. 1, 1926); In re Merchant Mariners Documents, 91 F.Supp. 426, 429 (N.D.Cal., 1949); Peoples Bank v. Eccles, 161 F.2d 636, 640 (D.C.App., 1947), rev'd. on other grounds, 333 U.S. 426 (1948)).

It may be assumed that a Federal regulation in conflict with a State law will nevertheless fail to prevent the adoption of the State

law under the Assimilative Crimes Act, or to terminate the effectiveness of the law, unless the regulation meets the fundamental tests indicated above. However, there appear to be no judicial decisions other than the Rentzel and Nash cases, supra, which both indicated a regulation to be valid that touch upon the subject. No reported judicial decision appears to exist upholding the effectiveness, under the Assimilative Crimes Act, of a primarily regulatory statute containing criminal provisions. Liquor licensing laws, zoning laws, building codes, and laws controlling insurance solicitation, when these provide criminal penalties for violations, are such as are under consideration.

On the other hand, no judicial decision has been discovered in which it has been held that a regulatory statute of the State which was the former sovereign was ineffective in an area under the exclusive jurisdiction of the Federal Government for the

reason that the Assimilative Crimes Act did not apply to federalize such statutes. Several cases have from time to time been cited in support of the theory that the act does not apply to criminal provisions of regulatory State statutes, but in each case the decision of the court actually was based on other grounds, whatever the dicta in which the court may have indulged.

Collins v. Yosemite Park Co., 304 U.S. 518 (1938), involved an attempt by a State body to license and control importation and sale of liquor in an area under partial (denominated "exclusive" in the opinion) Federal jurisdiction, where a right to impose taxes had been reserved by the State. While the court found unenforceable by the State the regulatory provisions of State law attempted to be enforced, it seems clear that it did so on the ground that the State's reservation to tax did not reserve to it authority to regulate, taxation and regulation being essentially different; there was no question involved as to whether the same regulatory statutes might have been enforced as Federal law by a Federal agency under the Assimilative Crimes Act.

Petersen v. United States, 191 F.2d 154 (C.A. 9, 1951), cert. den., 342 U.S. 885, decided that legislative jurisdiction had been transferred from a State to the United States with respect to a privately owned area within a national park, and on this basis the court held invalid a license issued by the State, contrary to Federal policy, for sale of liquor on the area. As in the Collins case, this was a disapproval of a State attempt to exercise State authority in a matter jurisdiction over which had been ceded to the Federal Government.

In Crater Lake Nat. Park Co. v. Oregon Liquor Control Com'n, 26 F.Supp. 363 (D.Ore., 1939), the court interpreted the Collins case as holding that "the regulatory features of the

California Liquor Act are not applicable to Yosemite National Park," and called attention to the similarity in the facts involved in the two cases. But in the Crater Lake Nat. Park Co. case there was raised for the first time, by motion for issuance injunction, the question whether the Assimilative crimes Act effects the federalization of regulatory provisions of State law; this question

the court did not answer, holding that its resolution should occur through a criminal proceeding and that there was no ground for injunctive relief.

The case of Birmingham v. Thompson, 200 F.2d 505 (C.A. 5, 1952), like the Collins and Petersen cases, resulted in a court's disapproval of a State's attempt to exercise State regulatory authority in a matter jurisdiction as to which had been transferred to the Federal Government. Here it was a municipality (under State-derived authority, of cause) which sought to impose the provisions of a building code, particularly the requirement for a build its incidental fee, upon a Federal contractor, and the court held that a State reservation of taxing power did not extend to permit State control of building. Again, there was involved no question as to whether the Assimilative Crimes Act federalized State regulatory statutes.

In the case of Johnson v. Yellow Cab Transit Co., 321 U.S. 383 (1944), there was involved a State seizure of liquor in transit through State territory to an area under exclusive Federal jurisdiction. The court's decision invalidating the seizure was based on the fact that no State law purported to prohibit or regulate a shipment into or through the State, there was raised the question whether the Assimilative Crimes Act effected an adoption of State law in the Federal enclave, which might have had the effect of making illegal the transactions involved. The court made clear that it was avoiding this question (p. 391):

> Were we to decide that the assimilative crimes statute is not applicable to this shipment of liquors, we would, in effect, be construing a federal criminal statute against the United States in a proceeding in which the United States has never been represented. And, on the other hand, should we decide the statute outlaws the shipment, such a decision would be equivalent to a holding that more than 200 Army Officers, sworn to support the Constitution, had participated in a conspiracy to violate federal law. Not only that, it would for practical purposes be accepted as an authoritative determination that all army reservations in the State of Oklahoma must conduct their activities in accordance with numerous Oklahoma liquor regulations, some of which, at least, are of doubtful adaptability. And all of this would be decided in a case wherein neither the Army Officers nor the War Department nor the Attorney General of the United States have been represented, and upon a record consisting of stipulations between a private carrier and the legal representatives of Oklahoma.

While two justices of the Supreme Court rendered a minority opinion expressing the view that the Assimilative Crimes Act adopted State regulatory statutes for the Federal enclave and made illegal the transactions involved, the majority opinion cannot hereby be construed, in view of the plain language with which it expresses the court's avoidance of a ruling on the question, as holding that the Assimilative Crimes Act does not adopt regulatory statutes.

The absence of decisions on the point whether the Assimilative Crimes Act is applicable to regulatory statutes containing criminal provisions may will long continue, in the general absence of Federal machinery to administer and enforce such statutes. In any event, it seems clear that portions of such statutes providing for

administrative machinery are inapplicable in Federal enclaves; and in numerous instances

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such portions will, in falling, bring down penal provisions from which they are inseparable.

UNITED STATES COMMISSIONERS ACT OF 1940: The act of October 9, 1940 (now 18 U.S.C. 3401), granted to United States commissioners the authority to make final disposition of petty offenses committed on lands under the exclusive or concurrent jurisdiction of the United States, this providing an expeditious method of disposing of many cases instituted under the assimilative crimes statute. By 28 U.S.C. 632, national park commissioners (see 28 U.S.C. 631), have had extended to them the jurisdiction and powers had by United States commissioners under 18 U.S.C. 43001.

The view has been expressed that under this act United States commissioners are not authorized to try persons charged with petty offenses committed within a national monument, a national memorial park, or a national wildlife refuge, because of the fact that United States held the particular lands in a proprietorial interest statue, in accordance with its usual practice respecting lands held for these purposes, and the act authorizes specially designated commissioners to act only with respect to lands over which the United States exercises either exclusive or concurrent jurisdiction.

It is interesting to note that the act of October 9, 1940 (54 Stat. 1058), of which the present code section is a re-enactment by the act of June 25, 1948, was introduced as H.R. 1999, 76th Congress. A similar bill (H.R. 4011) without the phraseology

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"or over which the United States has concurrent jurisdiction" was passed by the House of Representatives in the 75th Congress. When the bill was reintroduced in the 76th Congress, the above-quoted words were included at the special request of the National Park Service, since only a small number of national park areas were under the exclusive jurisdiction of the United States, and without some language to provide for the trial jurisdiction of commissioners over petty offenses committed in the other areas the benefits of the proposed legislation could not be realized in many national parks.

The words "concurrent jurisdiction" were suggested because they were understood as including partial (or proprietorial) jurisdiction and as consisting essentially of that jurisdiction of the Federal Government which is provided by the Constitution, article IV, section 8. In fact, for a number of years, a proprietorial interest status as exercised over permanent reservations by the United States was understood among attorneys in the Department of the Interior as "concurrent jurisdiction." This construction has never been placed on the term "concurrent jurisdiction" either by the courts or by Government agencies generally, and at least in recent years the Department of the Interior has not so interpreted the term.

In this connection, it should be noted that the Department of the Interior in the past considered obtaining, in collaboration with other interested Federal agencies, legislation which would

authorize United States commissioners to try petty offenses against the United States, regardless of the status of the jurisdiction over the Federal area involved.

The Committee has given consideration to broadening the powers of United States commissioners by authorizing them to act additionally on lands over which the Government has a proprietorial interest only. In the Committee's conclusions and recommendations, it was recommended that the powers of commissioners also extend to any place "* * * which is under the charge and control of the United States."

CHAPTER VI

CIVIL JURISDICTION

RIGHT OF DEFINING CIVIL LAW LODGED IN FEDERAL GOVERNMENT: In general.--Once an area has been brought under the exclusive legislative jurisdiction of the Federal Government, in general only Federal civil laws, as well as Federal criminal laws, are applicable in such area, to the exclusion of State laws. In Western Union Tel. co. v. Chiles, 214 U.S. 274 (1909), suit had been brought under a law of the State of Virginia imposing a statutory civil penalty for nondelivery of a telegram, the telegram in this instance having been addressed to the Norfolk Navy Yard. The court said (p. 278):

> It is apparent from the history of the establishment of the Norfolk Navy Yard, already given, that it is one of the places where the Congress possesses exclusive legislative power. It follows that the laws of the State of Virginia, with the exception referred to in the acts of Assembly, [right to execute civil and criminal process] cannot be allowed any operation or effect within the limits of the yard. The exclusive power of legislation necessarily includes the exclusive jurisdiction. The subject is so fully discussed by Mr. Justice Field, delivering the opinion of the court in Fort Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, that we need do no more than refer to that case and the cases cited in the opinion. It is of the highest public importance that the jurisdiction of the State should be resisted at the borders of those

> places where the power of exclusive legislation is vested in the congress by the Constitution. Congress already, with the design that the places under the exclusive jurisdiction of the United States shall not be freed from the restraints of the law, has enacted for them (Revised Statutes, LXX, chapter #) an extensive criminal code ending with the provision (Sec. 5391) that where an offense is not specially provided for by any law United States, it shall be prosecuted in the courts of the United States and receive the same punishment prescribed by the laws of the State in which the place is situated for like offenses committed within its jurisdiction. We do not mean to suggest that the statute before us creates a crime in the technical sense. If it is desirable that penalties should be inflicted for a default in the delivery of a telegram occurring within the jurisdiction of the United States, Congress only has the power to establish them.

The civil authority of a State is extinguished over privately owned areas and privately operated areas to the same extent as over federally owned and operated areas when such areas are placed under the exclusive legislative jurisdiction of the United States.

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State reservation of authority.--State reservation of authority to serve process in an area is not inconsistent with Federal exercise of exclusive jurisdiction over the area. It has been held, however, that a reservation of the right to serve process does not permit a State to serve a writ of attachment against either public or private property located on an area under exclusive Federal jurisdiction, and, it would seem, it does not permit State service of a writ of habeas corpus with respect to a person held on such an area. It has also been held, on the other hand, that a reservation to serve process enables service, under a statue appointing the Secretary of State to receive service for foreign corporations doing business within the State, upon a corporation doing business within the boundaries of the State only upon an exclusive Federal jurisdiction area. And residence of a person on an exclusive Federal jurisdiction area does not toll application of the State statute of limitations where there has been a reservation of the right to serve proc-

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ess. While a State may reserve various authority of a civil character other than the right to serve process in transferring legislative jurisdiction over an area to the Federal Government, such reservations result in Federal possession of something less than exclusive jurisdiction, and the rights of States with respect to the exercise of reserved authority in a Federal area will be discussed a subsequent chapter.

Congressional exercise of right.--statute relating to death or injury by wrongful act.--While the Congress has, through the Assimilative Crimes Act and Federal law defining various specific crimes, established a comprehensive system of Federal laws for the punishment of crimes committed in areas over which it has legislative jurisdiction, it has not made similar provision for civil laws in such areas. Indeed, the only legislative action of the Federal Government toward providing Federal civil law in these areas has been the adoption (in the general manner accomplished by the Assimilative Crimes Act), for areas under the exclusive legislative jurisdiction of the United States, of the laws of the several States relating to right of action for the death or injury of a person by the wrongful act or neglect of another. The act of February 1, 1928, has a history relating back to 1919. In that year Senator Walsh of Montana first introduced a bill (S. 206, 66th Cong., 1st Sess.), which was debated and passed by the Senate, but on which the House took no action, having substantially the language of the statute finally enacted. Nearly identical bills were introduce by the same senator and

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passed by the Senate, without the filing of a report and without debate, in the three succeeding Congresses. However, not until a fifth bill was presented by the senator (S. 1798, 70th Cong., 1st

Sess.) did favorable action ensue in the House, as well as in the Senate, and the bill became law. On but two occasions were these bills debated. When the first bill (S. 206, 66th Cong., 1st Sess.) came up for consideration, on June 30, 1919, Senator Walsh said with respect to it:

> The acts creating the various national parks give to the United States exclusive jurisdiction over those territories, so that a question has frequently arisen as to whether, in case one suffers death by the default or willful act of another within those jurisdiction, there is any law whatever under which the dependents of the deceased may recover against the person answerable for his death. For instance, in the Yellowstone National Park quite a number of deaths have occurred in connection with the transportation of passengers through the park, and a very serious question arises as to whether, in a case of that character, there is any law whatever under which the widow of a man who was killed by the neglect, for instance, of the transportation company handling the passengers in the park could recover.
>
> The purpose of this proposed statute is to give a right of action in all such cases exactly the same as is given by the law of the State within which the reservation or other place within the exclusive jurisdiction of the United States may be located.
>
> * * * * *
>
> This is merely to give the same right of action in case within a district which is within the exclusive jurisdic-

> tion of the United States as is given by the law of the State within which it is located should the occurrence happen outside of the region within the exclusive jurisdiction of the United States.

Senator Smoot interjected:

> I understand from the Senator's statement what is desired to be accomplished, but I was wondering whether it was a wise thing to do that at this time. An act of Congress authorizes the payment of a certain amount of money to the widow or the heirs of an employee killed or injured in the public service. It is true that those amounts are usually paid by special bills by way of claims against the Government when there is no objection to them. I do not know just how this bill, if enacted into law, will affect the existing law.

To which Senator Walsh replied:

> Let me say to the Senator that we are required to take care of the cases to which he has referred, because they touch the rights of persons in the employ of the United States, and their cause of action is against the United States. This bill does not touch cases of that kind at all. It merely touches cases of injury inflicted by some one other than the Government. Under this bill the Government will be in no wise liable at all.
>
> During Senate consideration of the fifth of the series of bills

(S. 1798, 70th Cong., 1st Sess.), on January 14, 1928, the following discussion was had:

> Mr. WALSH of Montana. A similar bill has passed the Senate many times, at least three or four, but for some reason or other it has not succeeded in securing the approbation of the House. It is intended practically to

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> make the application of what is known as Lord Campbell's Act to places within the exclusive jurisdiction of the United States.
>
> Practically every State now has given a right of action to the legal representatives of the dependent relatives of one who has suffered a death by reason of the neglect or wrongful act of another, there being no such recovery, it will be recalled, at common law.
>
> There are a great many places in the United States under the exclusive jurisdiction of the United States--the national parks, for instance. If a death should occur within those, within the exclusive jurisdiction of the United States, there would be no right of recovery on he part of the representatives or dependents of the person who thus suffered death as a result of the wrongful act or neglect of another.
>
> In the State of the Senator I suppose a right of action is given by the act of the Legislature of the State of Arkansas to the representatives of one who thus suffers, but if the death occur within the Hot Springs Reservation, being entirely within the jurisdiction of the United States, no recovery could be had, because recovery can be had there only by virtue of the laws of Congress. The same applies to the Yellowstone National Park in Wyoming and the Glacier National Park in Montana.
>
> Mr. WALSH of Montana. It would; so that if under the law of Arkansas a right of recovery could be had if the death occurred outside of the national park, the same right of action would exist if it occurred in the national park.
>
> Mr. BRUCE. In other words, as I understand it, it is intended to meet the common-law principle that a personal action dies with the death of the person?

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> Mr. WALSH of Montana. Exactly.

Only a single written report was submitted (by the House Committee on the Judiciary, on S. 1798) on any of the bills related to the act of February 1, 1928. In this it was stated:

> This bill has passed the senate on three or four occasions, but has never been reached for action in the House. This bill gives a right of action in the case of death of any person by neglect or wrongful act of another within a national park or other place

subject to the exclusive jurisdiction of the United States within the exterior boundaries of any State.

It provides that a right of action shall exist as though the place were under the jurisdiction of the State and that the rights of the parties shall be governed by the laws of the State within the exterior boundaries of which the national park or other Government reservation may be. Under the common law no right of action survived to the legal representatives in case of death of a person by wrongful act or neglect of another. This was remedied in England by what is known as Lord Campbell's Act, and the states have almost without exception passed legislation giving a right of action to the legal representatives or dependent relatives of one who has suffered death by reason of the wrongful act of another. This bill will provide a similar remedy for places under the exclusive jurisdiction of the United States.

It may be noted that neither the language of the 1928 act, nor the legislative history of the act, set out above, cast much light on whether the act constitutes a retrocession of a measure of jurisdiction to the States, or an adoption of State law as Federal law. But a retrocession, it has been seen, requires State consent, and no consent is provided for under this statute,

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unlike the case with repeat to Federal statutes providing for application of State laws relating to workmen's compensation, unemployment compensation, and other matters, where the Federal statute cannot be implemented without some action by the State. It is largely on this basis that the 1928 statute is here classified as a Federal adoption of State law, rather than a retrocession. It may also be noted hat the debate on the bills, and the House report, set out in pertinent part above, indicate that the purpose of the bill was to furnish a remedy to survivors in the nature of that provided by Lord Campbell's Act, and no reference is made to language in the title of the bill, and in its text, suggesting that the bill applied to personal injuries, as well as deaths, by wrongful act. While the question whether the act applies to personal injuries, as well as deaths, appears not to have been squarely presented to the courts, for purposes of convenience, only, the act is herein referred to as providing a remedy in both cases. In any event, however, it would clearly seem not to apply to cases of damage to personal or real property.

The statute adopting for exclusive jurisdiction areas State laws giving a right of action for death or injury by wrongful act or neglect did not, it was held by a case which led to further Federal legislation, adopt a State's workmen's compensation

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law. Murray v. Gerrick & Co., et al., 291 U.S. 315 (1934). An argument to the contrary was answered by the court as follows (p. 318):

* * * This argument overlooks the fact that the federal statute

> referred only to actions at law, whereas the state act abolished all actions at law for negligence and substituted a system by which employers contribute to a fund to which injured workmen must look for compensation. The right of action given upon default of the employer in respect of his obligation to contribute to the fund is conferred as a part of the scheme of state insurance and not otherwise. The act of Congress vested in Murray no right to sue the respondents, had he survived his injury. Nor did it authorize the State of Washington to collect assessments for its state fund from an employer conducting work in the Navy Yard. If it were held that beneficiaries may sue, pursuant to the compensation law, we should have the incongruous situation that this law is in part effective and in part ineffective within the area under the jurisdiction of the federal government. Congress did not intend such a result. On the contrary, the purpose was only to authorize suits under a state statute abolishing the common law rule that the death of the injured person abates the action for negligence.

It was also held in the Murray case that the 1928 Federal statute served to make effective in Federal areas the law as revised from time to time by the State, not merely the law in effect as of the date of transfer of legislative jurisdiction to

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the United States. The issue was not presented, however, whether a State statute enacted after the 1928 Federal statue would apply.

State unemployment compensation and workmen's compensation laws may be made applicable in such areas by authority of the Congress. But while the application of these laws has been made possible by Federal statutes, these statutes, discussed more fully in chapter VII, infra, did not provide Federal laws covering unemployment compensation; rather, they effect a retrocession of sufficient jurisdiction to the States to enable them to enforce and administer in Federal enclaves their State laws relating to unemployment compensation and workmen's compensation. The Federal Government has similarly granted powers to the States for exercise in Federal enclaves with respect to taxation, and these also will be discussed in a subsequent chapter.

Early apparent absence of civil law.--A careful search of the authorities has failed to disclose recognition prior to 1885 of any civil law as existing in areas under the exclusive legislative jurisdiction of the United States. Debates and other parts of the legislative history of the Assimilative Crimes Act, indicating prevalence of a belief that in the absence of Federal statutory law providing for punishment of criminal acts such acts in exclusive jurisdiction areas could not be punished, suggest the existence in that time of a similar belief that in the absence of appropriate Federal statutes no civil law existed in such areas.

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INTERNATIONAL LAW RULE: Adopted for areas under Federal legislative jurisdiction.--In 1885 the United States Supreme Court had occasion to consider the case of Chicago, Rock Island & Pacific

Ry. v. McGlinn, 114 U.S. 542, involving a cow which became a casualty on a railroad right-of way traversing fort Leavenworth reservation. At the time that the Federal Government had acquired legislative jurisdiction over the reservation a Kansas law required railroad companies whose roads were not enclosed by a fence to pay damages to the owners of all animals killed or wounded by the engines or cars of the companies without reference to the existence of any negligence. A State court had held the law applicable to the casualty involved in the McGlinn case. The United States Supreme Court, in affirming the judgment of the State court, explained as follows its reasons for so doing (p. 546):

> It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new sovereign. By the cession public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction

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> and legislative power--and the latter is involved in the former--to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general, that a change of government leaves them in force until, by direct action by the new government, they are altered or repealed. American Insurance Co. v. Canter, 1 Pet. 542; Halleck, International Law, ch. 34, Sec. 14.

The rule thus defined by the court had been applied previously to foreign territories acquired by the United States (American Insurance Company v. Canter, 1 Pet. 511 (1828)), but not until the McGlinn case was it extended to areas within the States over which the Federal Government acquired exclusive legislative jurisdiction. The McGlinn case has been followed many times, of course; adoption of the international

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law rule for areas under exclusive legislative jurisdiction has

filled a vacuum which would otherwise exist in the absence of Federal legislation, and furnishes a code of civil law for Federal enclaves.

Federalizes State civil law, including common law.--The rule serves to federalize not only the statutory but the common law of a State. Kniffen v. Hercules Powder Co., 164 Kan. 196, 188 P.2d 980 (1948); Kaufman v. Hopper, 220 N.Y. 184. 115 N.E. 470 (1917), see also 151 App. Div. 28, 135 N.Y.Supp. 363 (1912), aff'd., 163 App. Div. 863, 146 N. Y. Supp. 1096 (1914); Norfolk & P.B.L.R. v. Parker, 152 Va. 484, 147 S.E. 461 (1929); Henry Bickel Co. v. Wright's Administratrix, 180 Ky. 181, 202 S.W. 672 (1918). But it applies merely to the civil law, not the criminal law, of a State. In re Ladd, 74 Fed. 31 (C.C.D.Neb., 1896). See also 22 Calif. L. Rev. 152, 164 (1934).

Only laws existing at time of jurisdiction transfer federalized.--It should be noted, however, that the international law rule brings into force only the State laws in effect at the time the transfer of legislative jurisdiction occurred, and later State enactments are not effective in the Federal enclave. So, in

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Arlington Hotel Company v. Fant, 278 U.S. 439 (1929), the court charged an innkeeper on a Federal reservation at Hot Springs, Arkansas, with liability s an insurer of his guests' personal property against fire, under the common law rule, which was in effect in that State at the time legislative jurisdiction had passed to the United States over he area involved, although Arkansas, like most or all States, had subsequently modified this rule by statute so as to require a showing of negligence. The non-applicability to areas under exclusive Federal legislative jurisdiction of State statutes enacted subsequent to the transfer of jurisdiction to the Federal Government has the effect that the civil law applicable in such areas gradually becomes obsolete, as demonstrated by the Arlington Hotel Co. case, since the Federal Government has not legislated for such areas except in the minor particulars already mentioned.

CIRCUMSTANCES WHEREIN FORMER STATE LAWS INOPERATIVE: (A). By action of the Federal Government.--That an act of Congress may constitute the "direct action of the new government" mentioned in the McGlinn case which will in validate former State laws in an area over which exclusive legislative jurisdiction has been transferred to the Federal Government apparently has not been the subject of litigation, undoubtedly because the matter is so fundamental and self-evi-

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dent. In Webb v. J.G. White Engineering Corp., 204 Ala. 429, 85 So. 729 (1920), State laws relating to recovery for injury were held inapplicable to an employee of a Federal contractor on an exclusive Federal jurisdiction area on the ground that Federal legislation had pre-empted the field. It is not clear whether the same result would have obtained in the absence of exclusive jurisdiction in the Federal Government over the area in which the injury occurred. The "direct action of the new government" apparently may be action of the Executive branch as well as of the Congress. In the case of Anderson

v. Chicago and Northwestern R.R., 102 Neb. 578, 168 N.W. 196 (1918), the facts were almost precisely as in the McGlinn case. However, the War Department had ordered the railroad not to fence the railroad right-of-way on the ground that such fencing would interfere with the drilling and maneuver of troops. The defendant railroad was held not liable in the absence of a showing of negligence. The court said (102 Neb. 584):

> The war department has decided that the fencing of the right of way would impair the effectiveness of the territory for the purpose for which the cession was made. That department possesses peculiar and technical skill and knowledge of the needs of the nation in the training of its defenders, and of the necessary conditions to make the ceded territory fit for the purpose for which it was acquired. It is not for the state or its citizens to interfere with the purposes for which control of the territory was ceded, and, when the defendant was forbidden to erect the fences by that department of the United States government lawfully in control of the

> reservation, no other citizen can complain of non-performance of held defendant guilty of a violation of law.

(b) Where activity by State officials required.--An apparent exception to the international law rule is concerned with State laws which require administrative activity on the part of State officials. In Stewart & Co. v. Sadrakula, 309 U.S. 94 (1940), the question was presented as to whether certain safety requirements prescribed by the New York Labor Law applied to a post office building which was being constructed in an area over which the Federal Government had exclusive legislative jurisdiction. An employee of a contractor engaged in the construction of the New York City Post Office fell from the building and was killed. His administratrix, in an action of tort against the contractor, narrowed the scope of the charges of negligence until there finally was alleged only the violation of a subsection of the New York Labor Law which required the planking of floor beams. The Supreme Court of the United States, in upholding a judgment for the administratrix based upon a finding that the Labor Law was applicable, said (pp. 101-103):

> It is urged that the provisions of the Labor Law contain numerous administrative and other provisions which cannot be relevant to federal territory. The Labor Law does have a number of articles. Obviously much of their language is directed at situations that cannot arise in the territory. With the domestication in the excised area of the entire applicable body of state municipal law much of the state law must necessarily be appropriate. Some sections authorize quasi-judicial proceedings or administrative action and may well have no validity in the federal area. It is not a question here of the exercise of state administrative authority in federal territory. We do not agree, however, that because the Labor Law is not applicable as a whole, it follows that none of its sections are. We have in Collins v. Yosemite Park Company that the sections of a Cali-

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fornia statute which levied excises on sales of liquor in Yosemite National Park were enforceable in the Park, while sections of the same statute providing regulation of the Park liquor traffic through licenses were unenforceable.

In view of the decisions in the Sadrakula and Gerrick cases, the conclusion is inescapable that State laws which contemplate or require administrative action are not effective under the international law rule. Clearly, the States receive no authority to operate administrative machinery within areas under exclusive Federal legislative jurisdiction through the adoption of State law as Federal law for the areas. Therefore, adoption as Federal law of a State law requiring administrative action would be of little effect unless the Federal Government also established administrative machinery paralleling that of the State. Instead of providing for the execution of such State laws as Federal law, the Federal Government has authorized the States to extend the application of certain such laws to areas of exclusive Federal legislative jurisdiction. Thus, as has been indicated, the States have been authorized to extend their workmen's compensation and unemployment compensation laws to such Federal areas. However, little or no provision has been made for either State of Federal administration of laws in various other fields.

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(c) Inconsistency with Federal law.--In Hill v. Ring Construction Co., et al., 19 F.Supp. 434 (W.D.Mo., 1937), which involved a contract question, the court refused to give effect under the international law rule to a statute which had been in effect in the State involved at the time legislative jurisdiction was transferred to the federal Government. This statute provided that thirteen and one-half cubic feet (rather than the mathematically provable 27 cubic feet) constituted a cubic yard. In refusing to apply the statute, the court stated it was inconsistent with the "national common law" which, according to the court, provides that "two added to two were always four and a cubic yard was a cubic yard." The court makes clear, however, that it strained to this conclusion. There appears to be no reported decision except that in the Hill case, supra, wherein a State civil law has been declared in applicable as Federal law under the international law rule in an area under exclusive Federal jurisdiction because of its inconsistency with other law of the new Federal sovereign. There are similarly no cases holding State law applicable notwithstanding such inconsistency. The rule, as it was definition the McGlinn case, is very clear on this subject, however, and State civil laws inconsistent with Federal laws would fall under the international law rule as State criminal laws inconsistent with Federal laws fall under the Assimilative Crimes Act.

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INTERNATIONAL LAW RULE IN RETROCESSION OF CONCURRENT JURISDICTION: A question which has not as yet been considered by the courts is the extent to which, if to any, the international law rule

is applicable to areas which had been subject to exclusive legislative jurisdiction, and over which concurrent jurisdiction has been retroceded to the State. The fact hat concurrent jurisdiction only is retroceded, would, as a matter of statutory construction, suggest that Federal law currently in effect in the area is unaffected. The applicable Federal criminal laws would not, presumably, be repealed or suspended by a retrocession of concurrent jurisdiction, nor any other Federal statutes which were enacted for areas Federal legislative jurisdiction. Similarly, it might be argued, such retrocession of concurrent jurisdiction does not serve to repeal Federal laws which were adopted pursuant to the international law rule. While it is a seeming anomaly to have two sets of laws governing civil matters, it seems no more anomalous than to have two sets of criminal laws applicable to the same crime, and that, it has been seen, is a state of fact, to which reasonably satisfactory adjustment appears to have been made. However, an adjustment to two sets of civil laws would seen more difficult, and, indeed, perhaps it would not be entirely possible. The considerations supporting a conclusion that laws federalized under the international law rule would not survive a retrocession of concurrent jurisdiction to the State have their bases in the fact that international law rule is applied as a matter of necessity, in order to avoid a vacuum in the area which has been the subject of the jurisdictional transfer. When the need for the application of the rule no longer exists, it is logical to assume, the laws which have been adopted thereunder are no longer effective. merit of this conclusion rests on practical considerations as well as logic, and these considerations would seem to make the conclusion outweigh the contrary position, based solely on considerations of logic.

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STATE AND FEDERAL VENUE DISCUSSED: The civil laws effective in an area of exclusive Federal jurisdiction are Federal law, notwithstanding their derivation from State laws, and a cause arising under such laws may be brought in or removed to a Federal district court under sections 24 or 28 of the former Judicial Code (now sections 1331 and 1441 of title 28, United States Code), giving jurisdiction to such courts of civil actions arising under the "* * * laws * * * of the United States" where the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs. Steele v. Halligan, 229 Fed. 1011 (W.D.Wash., 1916). To the same effect as the holding in the Steele case, and following the decisions in the McGlinn and Arlington Hotel Co. cases, were those in Coffman v. Cleveland Wrecking Co., et al., 24 F.Supp. 581 (W.D.Mo., 1938), and in Jewell v. Cleveland Wrecking Co. of Cincinnati, et al., 28 F.Supp. 366 (W.D.Mo., 1938), rev'd. on other grounds, 111 F.2d 305 (C.A. 8, 1940). In each of these it was decided that laws of the State (Missouri) existing at the time of Federal acquisition of legislative jurisdiction over an area became "laws of the United States" within that area. However, in a related case in the same district (Jewell v. Cleveland Wrecking Co., 28 F.Supp. (W.D.Mo., 1938)), another judge appears to have rejected this view of the law on grounds not entirely clear but having their bases in the fact that the trial in the McGlinn case, supra, occurred in a State court (it involved a transitory action).

Transitory actions may be brought in State courts

notwithstanding that they arise out of events occurring in an exclusive Federal jurisdiction area. Ohio River contract Co. v. Gordon, 244 U.S. 68 (1917). Indeed, unless there is involved one of

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the special situations (admiralty, maritime, and prize cases, bankruptcy matters and proceedings, etc.), as to which Federal district courts are given original jurisdiction by chapter 85 of title 18, United States Code, only State courts, and not Federal district courts, may take cognizance of an action arising out of events occurring in an exclusive Federal jurisdiction area unless the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs. But State authority to serve process in exclusive Federal jurisdiction areas is limited to process relating to activities occurring outside of the areas, although a number of States now reserve broader authority relating to service of process, so that unless process can be served on the defendant outside the exclusive Federal jurisdiction area it appears that even a transitory action arising in such an area could not be maintained in a State court. In such a case it appears that no remedy whatever exists, even with

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respect to a transitory cause of action, where the matter in controversy does not involve the Federal jurisdiction area, generally is held as not cognizable in State courts. So, except, as local actions may come within the purview of the limited (except in the District of Columbia) authority of Federal district courts to entertain them, no remedy is available in many types of such actions arising in Federal exclusive jurisdiction areas. Divorce actions and actions for probate of wills, it will be seen, have constituted a special problem in this respect. Local actions pending in the State courts at the time of transfer of legislative jurisdiction from a State to the Federal Government should be proceeded in to a conclusion, it has been held. Van Ness v. Bank of the United States, 13 Pet. 15 (1839).

FEDERAL STATUTES AUTHORIZING APPLICATION OF STATE LAW: As has been indicated, the federal Government has authorized the extension of State workmen's compensation and unemployment compensation laws to areas of exclusive legislative jurisdiction. In addition, the States have been authorized to extend certain of their tax laws to such areas. As a consequence, areas of exclusive legislative jurisdiction are as completely subject to certain State laws as areas in which the Federal Government has only a proprietorial interest. The operation and effect of the extension of these State laws is considered more fully in chapter VII.

CHAPTER VII

RELATION OF STATE TO FEDERAL ENCLAVES

EXCLUSIVE FEDERAL JURISDICTION: States basically without authority.--When the Federal Government has acquired exclusive legislative jurisdiction over an area, by any of the three methods of acquired such jurisdiction, it is clear that the State in which the area is located is without authority to legislate for the area or to enforce any of its laws within the area.

no legislative jurisdiction over the area to which the milk was delivered. In holding that California could not enforce its regulations, the court said (pp. 294-295):

> The exclusive character of the jurisdiction of the United States on Moffett Field is conceded. Article I, Sec. 8, clause 17 of the Constitution of the United States declares the Congress shall have power "To exercise exclusive Legislation in all Cases whatsoever, over" the District of Columbia, "and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * *."
>
> When the federal government acquired the tract, local law not inconsistent with federal policy remained in force until altered by national legislation. The state statute involved was adopted long after the transfer of sovereignty and was without force in the enclave. It follows that contracts to sell and sales consummated within the enclave cannot be regulated by the California law. To hold otherwise would be to affirm that California may ignore the Constitutional provision that "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land; * * *." It would be a denial of the federal power "to exercise exclusive Legislation." As respects such federal territory Congress has the combined powers of a general and a state government.
>
> The answer of the State and of the court below is one of confession and avoidance,--confession tat the law in fact operates to affect action by the appellant within federal territory, but avoidance of the conclusion of invalidity by the assertion that the law in essence is the regulation of conduct wholly within the state's jurisdiction.

> The court below points out that the statute regulates only the conduct of California's citizens within its own territory; that it is the purchasing, handling, and processing by the appellant in California of milk to be sold below the fixed price--not the sale on Moffett Field--which is prohibited, and entails the penalties prescribed by the statute. And reliance is placed upon the settled doctrine that a state is not disenabled from policing its own concerns, by the mere fact that its regulations may beget effects on those living beyond its borders. We think, however, that it is without application here, because of the authority granted the federal government over Moffett Field.
>
> In the light of the history of the legislation, we are constrained to find that the true purpose was to punish California's own citizens for doing in exclusively federal territory what by the law of the United States was there lawful, under the guise of penalizing preparatory conduct occurring in the State, to punish the appellant for a transaction carried on under sovereignty conferred by Art. In Sec. 8, clause 17 of the Constitution, and under authority superior to that of California by virtue of the supremacy clause.

In the Pennsylvania case, which involved an area not subject to exclusive legislative jurisdiction, a contrary conclusion was reached. The court said (p. 269):

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> We may assume that Congress, in aid of its granted power to raise and support armies, Article I, Sec. 8, cl. 12, and with the support of the supremacy clause, Article VI, Sec. 2, could declare State regulations like the present inapplicable to sales to the government. * * * But there is no clause of the Constitution which purports, unaided by Congressional enactment, to prohibit such regulations, and the question with which we are now concerned is whether such a prohibition is to be implied from the relationship of the two governments established by the Constitution. We may assume also that, in this absence of Congressional consent, there is an implied constitutional immunity of the national government from state taxation and from state regulation of the performance, by federal officers and agencies, of governmental functions. * * * But those who contract to furnish supplies or render services to the government are not such agencies and do not perform governmental functions, * * * and the mere fact that non-discriminatory taxation or regulation of the contractor imposes an increased economic burden on the government is no longer regarded as bringing the contractor within any implied immunity of the government from state taxation or regulation.

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In each of the Dairy case there were dissents. A dissent in the Pennsylvania case based on the ground that, in the view of the dissenting justice, Congressional policy contemplated securing milk at a price freely determined by competitive forces, and that, since

the Pennsylvania regulation prevented the fruition of that policy, it was invalid. In two dissents in the California case, views were expressed which, if adopted, would require congressional action undertaking the exercise of jurisdiction over an area purchased with the consent of the State before the jurisdiction of the State would be ousted. It is emphasized that these views do not represent the state of the law. In one dissent it was said (pp. 305-306):

> The "exclusive legislation" clause has not been regarded as absolutely exclusory, and no convincing reason has been advanced why the nature of the federal power is such that it demands that all state legislation adopted subsequent to the acquisition of an enclave must have no application in the area. * * *
>
> If Congress exercises its paramount legislative power over Moffett Field to deny California the right to do as it has sought to do here, the matter is of course at an end. But until Congress does so, it should be the aim of the federal military procurement officers to observe statutes such as this established by state action in furtherance of the public health and welfare, and otherwise so conduct their affairs as to promote public confidence and good will.

The evident suggestion in this statement that the Federal Government must exercise its exclusive jurisdiction before State jurisdiction is ousted apparently is without Federal jurisdiction precedent. Moreover, this view would, if carried to its logical conclusion, undermine the basis for the international law rule and render unnecessary the application of the rule to areas subject to exclusive legislative jurisdiction, since it would

seem that, under this view, the laws of the State governing matters on which the Federal Government had not legislated would be fully effective in such areas. Finally, in view of the opinion expressed by the majority of the Court in the Pennsylvania case that Congress could direct noncompliance with the State regulation involved in that case, the dissenting justice's suggestion that noncompliance in areas of exclusive legislative jurisdiction must be based on a similar congressional direction would, it seems, serve to nullify legal distinctions between the two types of areas.

In a second dissent in the California case, there were expressed views somewhat similar to those indicated above. The other dissenting justice stated (p. 300):

> Enough has been said to show that the doctrine of "exclusive jurisdiction" over federal enclaves is not an imperative. The phrase is indeed a misnomer for the manifold legal phases of the diverse situations arising out of the existence of federally-owned lands within a state--problems calling not for a single, simple answer but for disposition in the light of the national purposes which an enclave serves. If Congress speaks, state power is of course determined by what Congress says. If Congress makes the law of the state in which there is a federal site as foreign there as is the law of China, then federal jurisdiction would really be exclusive. But short of such Congressional assertion of overriding authority, the phrase "exclusive jurisdiction" more often confounds than solves

problems due to our federal system.

This suggestion that congressional action is an imperative to establish exclusive Federal legislative jurisdiction is, of course, subject to the same comment as is applicable to similar views expressed by the other dissenting justice. However, the second dissenting justice also deplored the varied results which are effected by different degrees of Federal jurisdiction, and

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after citing some incongruities which might arise, he stated (p. 302):

> These are not far-fetched suppositions. They are the inevitable practical consequences of making decision here depend upon technicalities of "exclusive jurisdiction"--legal subtleties which may become relevant in dealing with prosecution for crime, devolution of property, liability for torts, and the like, but which as a matter of good sense surely are wholly irrelevant in defining the duty of contracting officers of the United States in making contracts in the various States of the Union, where neither Congress nor the authoritative voice of the Army has spoken. In the absence of such assertion of superior authority, state laws such as those here under consideration appear, as a matter of sound public policy, equally appropriate whether the federal territory encysted within a state be held on long or short term lease or be owned by the Government on whatever terms of cession may have been imposed.

The majority opinion in the California case anticipated the dissents and alluded to the suggestions contained in them as follows (pp. 295-296):

> We have this day held in Penn Dairies v. Milk Control Commission, ante, p. 261, that a different decision is required when the contract and the sales occur within a state's jurisdiction, absent specific national legislation excluding the operation of the state's regulatory laws. The conclusions may seem contradictory; but in preserving the balance between national and state power, seemingly inconsequential differences often require diverse results. This must be so, if we are to accord to various provisions of fundamental law their natural effect in the circumstances disclosed. So to do is not to make subtle or technical distinctions or o deal in legal refinements. Here we are bound to respect the relevant

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> constitutional provision with respect to the exclusive power of Congress over federal lands. As Congress may, if it find the national interest so requires, override the state milk law of Pennsylvania as respects purchases for the Army, so it may, if not inimical to the same interest subject its purchasing officers on Moffett Field to the restrictions of the milk law of California. Until it speaks we should enforce the limits of power imposed by the provisions of the fundamental law.

The companion Dairy case are significant in a number of respects. They illustrate sharply the effects of exclusive legislative jurisdiction in curbing the authority of the States. Quite clearly, they establish that the law of the State has no application in an area of exclusive legislative jurisdiction, and that such exclusion of State authority rests on the fact of exclusive legislative jurisdiction; it is unnecessary for Congress to speak to effect that result. Such jurisdiction serves to exclude not only the operation of State laws which constitute an interference with a Federal function, but also the application of State laws which are otherwise not objectionable on constitutional grounds.

The Dairy case are also significant in that they indicate some disposition, as on the part of the justices constituting a minority of the court in the California case, to regard exclusive legislative jurisdiction as not constituting a barrier to the application of State law absent an expression by Congress that such barrier shall exist. Such a view constitutes, it seems clear, a sharp departure from overwhelming precedent, and serves to blur the historical legal distinctions between areas of exclusive legislative jurisdiction and areas in which the Federal Government has only a proprietorial interest.

The views of the majority of the Supreme Court in the California case are in accord with other decisions which have considered the effects of exclusive legislative jurisdiction on

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the authority of the State with respect to the area subject to such jurisdiction.

Authority to tax excluded.--Exclusive Federal legislative jurisdiction, it seems well settled, serves to immunize from State taxation privately owned property located in an area subject to such jurisdiction.

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ter is Surplus Trading Co. v. Cook, 281 U.S. 647 (1930), wherein the Supreme Court held that Arkansas was without authority to tax privately owned personal property located on a military reservation which was purchased by the Federal Government with the consent of the legislature of the State in which it was located. The Supreme Court based its conclusion on the following proposition of law (p. 652):

> It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision [viz., article I, section 8, clause 17], to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.

In reaching its conclusion, the Supreme Court cited early cases such as Commonwealth v. Clary, 8 Mass. 72 (1811); Mitchell v. Tibbetts, 17 Pick 298 (Mass., 1839); United States v. Cornell, 25 Fed.Cas. 646,

No. 14,867 (C.C.D.R.I., 1819); and Sinks v. Reese, 19 Ohio St. 306 (1869). The Supreme Court also quoted with approval the statement which was made in reliance on these same early cases in Fort Leavenworth R.R. v. Lowe, supra, at 537:

> These authorities are sufficient to support the proposition which follows naturally from the language of the Constitution, that no other legislative power than that of Congress can be exercised over lands within a State purchased by the United States with her consent for one of the purposes designated; and that such consent under the Constitution operates to exclude all other legislative authority.

In the Cook case the area had been purchased by the Federal Government with the consent of the legislature of the State, jurisdiction thereby passing to the United States under clause 17. In Standard Oil Company of California v. California, 291 U.S. 242 (1934), the Supreme Court held that a cession of

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exclusive legislative jurisdiction to the Federal Government by a State also served to deprive the latter of the authority to lay a license tax upon gasoline sold and delivered to an area which was the subject of the jurisdictional cession.

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> Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the Presidio, she is now without to impose taxes in respect of sales and deliveries made therein. This claim, we think, is well founded; * * *.

In Coleman Bros. Corporation v. City of Franklin, 58 F.Supp. 551 (D.N.H., 1945), aff'd. , 152 F.2d 527 (C.A. 1, 1945), cert. den., 328 U.S. 844, the same conclusion was reached with respect to the attempt of a city to tax the personal property used by a contractor in constructing a dam on an area of exclusive Federal legislative jurisdiction, and in Winston Bros. Co. v. Galloway, 168 Ore. 109, 121 P.2d 457 (1942), thee is distinguished the applicability of a tax on net earnings from work done by a Federal contractor on land over which the Federal Government did not have legislative jurisdiction, and that done on land over which it did have jurisdiction.

Other authority excluded.--Attempts on the part of the States to regulate other activities in areas under Federal legislative jurisdiction have met with the same fate as attempts to control milk prices and to levy taxes. Thus, in In re Ladd,

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74 Fed. 31 (C.C.D.Neb., 1896), it was held that the laws of Nebraska

requiring a permit to sell liquor do not apply to areas of exclusive legislative jurisdiction. See also Farley v. Scherno,

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208 N.Y. 269, 101 N.E. 891 (1913). A State cannot, without an express reservation of authority to do so, enforce in an area under Federal legislative jurisdiction the regulatory features of its Alcoholic Beverage Control Act. Collins v. Yosemite Park Co., 304 U.S. 518 (1938). Nor may a State license, under its Alcoholic Beverage Control Act, sale of liquor in an area which is within the exterior boundaries of the State but under exclusive Federal jurisdiction. Peterson v. United States, 191 F.2d 154 (C.A. 9, 1951), cert. den., 342 U.S. 885.

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And, it appears, a State may not prevent, tax, or regulate the shipment of liquor from outside of the State to an area within the exterior boundaries of the State but under exclusive Federal legislative jurisdiction. Johnson v. Yellow Cab Transit Co., 321 U.S. 383 (1944); see also State v. Cobaugh, 78 Me. 401 (1886); and Maynard & Child, Inc. v. Shearer, 290 S.W.2d 790 (Ky., 1956). But it has been held that a wholesaler may not make a shipment of liquor to an area within the same State which is subject to exclusive Federal jurisdiction under a license from the State to export liquor, nor to an unlicensed purchaser in the area where the wholesaler's license for domestic sales limited such sales to licensed purchasers. McKesson & Robbins v. Collins, 18 Cal. App. 2d 648, 64 P.2d 469 (1937). And an excise tax has been held applicable to liquor sold to (but not by) retailers located on Federal enclaves, where the tax is on sales by wholesalers. Op.A.G., Cal., No. 10,255 (Oct. 8, 1935).

State laws (and local ordinances) which provide for administrative action have no application to areas under exclusive Federal legislative jurisdiction. State and local governments cannot enforce ordinances relating to licenses, bonds, inspections, etc., with respect to construction in areas under exclusive

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Federal jurisdiction. Oklahoma City, et al. v. Sanders, 94 F.2d 323 (C.A. 10, 1953); Op. A.G., N.M., Mo. 5340 (Mar. 6, 1951); id. No. 5348 (Mar. 29, 1951); see also Birmingham v. Thompson, 200 F.2d 505 (C.A. 5, 19522). Other State and local licensing provisions are also inapplicable in such areas. A State cannot enforce its game laws in an area where exclusive legislative jurisdiction over wildlife has been ceded to the United States. Chalk v. United States, 114 F.2d 207 (C. A. 4, 1940), cert. den., 312 U.S. 679.

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None of the laws of a State imposing special duties upon its residents are applicable to residents of areas under exclusive

Federal legislative jurisdiction. In one of the very earliest cases relating to exclusive Federal legislative jurisdiction, it was stated that inhabitants of such areas are not "held to pay any taxes imposed by its [i.e. the State's] authority, nor bound by any of its laws," and it was reasoned that it might be very inconvenient to the United States to have "their laborers, artificers, officers, and other persons employed in their service, subjected to the services required by the Commonwealth of the inhabitants of the several towns." Commonwealth v. Clary, 8 Mass. 72 (1811). A State statute requiring residents of the State to work on State roads is not applicable to residents of an area subject to exclusive Federal legislative jurisdiction. 16 Ops. A. G. 468 (1880); Pundt v. Pendleton, 167 Fed. 997 (N.D.Ga., 1909).

But in Bailey v. Smith, 40 F.2d 958 (S.D.Iowa), it was held that a resident of an exclusive Federal jurisdiction area was not exempt under a State automobile registration law which exempted persons who had complied with registration laws of the State, territory, or Federal district of their residence, the term "Federal district" being construed to apply only to the District of Columbia, and the United States Supreme Court has upheld a requirement for registration with the State under similar circumstances. Storaasli v. Minnesota, 283 U.S. 57 (1931). See also Valley County v. Thomas, 109 Mont. 345, 97 P.2d 345 (1939).

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Status of State and municipal services.--The Comptroller General of the United States consistently and on a number of occasions has disapproved proposed payment by the federal Government to a State or local government of funds for fire-fighting on a Federal installation, either for services already rendered or for services to be rendered on a contractual basis. In support of his position he has maintained that there exists a legal duty upon municipal or other fire-fighting organizations to extinguish fires within the limits of their municipal or other boundaries. He has not, in his decisions on these matters, distinguished between areas which are and those which are not under the legislative jurisdiction of the United States.

The Comptroller General has indicated that his views relating to fire-fighting extend too her similar services ordinarily rendered by or under the authority of a State. See 6 Comp. Gen. 741 (1927); Comp. Gen. Dec. B-50348 (July 6, 1945); cf. id. B-51630 (Sept. 11, 1945), where estimates and hearings made clear that an appropriation act was to cover cost of police and fire protection under agreements with municipalities. In disapproving a proposed payment to a municipality for fir-fighting services performed on a Federal installation, he said (24 Comp. Gen. 599, 603):

> * * * if a city may charge the Federal Government for the service of its fire department under the circumstances here involved, would it not follow that a charge could be made for the service of its police department, the services of its street-cleaning department and all similar service usually rendered by a city for the benefit and welfare of its inhabitants.

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No court decisions dealing directly with questions of obligation for the rendering of State and municipal services to Federal installations have been found. It would appear, however, with respect to Federal areas over which a State exercises legislative jurisdiction, that while the furnishing of fire-fighting and similar services would be a matter for the consideration of officials of the State or a local government, the obligation to furnish them would be a concomitant of the powers exercised by those authorities within such areas (Comp. Gen. Dec. B-126228 (Jan. 6, 1956).

It may be noted that the Congress has provided authority for Federal agencies to enter into reciprocal agreements with fire-fighting organizations for mutual aid in furnishing fire protection, and, further, for Federal rendering of emergency fire-fighting assistance in the absence of a reciprocal agreement.

Service of process.--It has been held many times that the reservation by a State (or the grant to the States by the United States) of the right to serve process in an area is not inconsistent with Federal exercise of exclusive jurisdiction over the area. In each of the instances in which the consistency with exclusive Federal jurisdiction of a State's right to save process has been upheld, however, either the State had expressly reserved this right or the Congress had authorized such service. It seems entirely probable that in the absence of either a reservation of a Federal statutory authorization covering the matter a State would have no greater authority to serve process

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in an area of exclusive Federal jurisdiction than it does in an area beyond its boundaries. It has bee so held by the Attorney General.

STATE RESERVATIONS OF JURISDICTION: In general.--In ceding legislative jurisdiction to the Federal Government, and also in consenting to the purchase of land by the Federal Government pursuant to article I, section 8, clause 17, of the Constitution, it is a common practice of the States to reserve varying quanta jurisdiction.

There is now firmly established the legal and constitutional propriety of reservations of jurisdiction in State consent and cession statutes. Subject to only one general limitation, a State has unlimited discretion in determining the character and scope of the reservation which it desires to include in such statutes. The sum and substance of the limitation appears to be that a State may not by a reservation enlarge its authority with respect to the area in question; or, to put it conversely, that a reservation of jurisdiction by a State may not diminish or detract from the power and authority which the Federal Government possesses in the absence of a transfer to it of legislative jurisdiction.

Reservations construed.--State reservations of jurisdiction have presented few legal problems. In no instance has a State reservation of jurisdiction been invalidated, or its scope nar-

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rowed, on the ground that its effect was to enlarge the power of the State or to interfere with the functions of the Federal Government. Instead, the reported cases involving such reservations have presented questions concerning the scope of the reservation actually

made. Thus, in Collins v. Yosemite Park Co., 304 U.S. 518 (1938), it was held that a reservation by a State of the right to tax the sale of liquor does not include the right to enforce the regulatory features of the State's alcoholic beverage control act in an area in which, except inter alia the right to tax, the tax, the entire jurisdiction of the State had been ceded to the Federal Government. Similarly, in Birmingham v. Thompson, 200 F.2d 505 (C.A. 5, 1952), it was held that even though the State, in ceding jurisdiction to the Federal Government, reserved the right to tax persons in the area over which jurisdiction had been ceded, a city could not require the payment of a license fee by a contractor operating in the area where issuance of the license was coupled with a variety of regulatory provisions. The results reached in these two cases suggest that State statutes transferring jurisdiction will be construed strictly. Only those matters expressly mentioned as reserved will remain subject to the jurisdiction of the State.

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AUTHORITY OF THE STATES UNDER FEDERAL STATUTES: In general.--In order to ameliorate some of the practical consequences of exclusive legislative jurisdiction, Congress has enacted legislation permitting the extension and application of certain State laws to areas under Federal legislation jurisdiction. Thus, Congress has authorized the States to extend to such areas certain State taxes on motor fuel (the so-called "Lea Act," 4 U.S.C. 104); to apply sales, use, and income taxes to such areas (the so-call "Buck Act," 4 U.S.C. 105 et seq.); to tax certain private leasehold interests on Government owned lands (the so-called "Military Leasing Act of 1947," 61 Stat. 774); and to extend to federal areas their workmen's compensation and unemployment compensation laws (26 U.S.C. 3305 (formerly 1606), subsec. (d), and act of June 25, 1936, 49 Stat. 1938, 40 U.S.C. 290, respectively). Congress has also enacted a statute retroceding to the States jurisdiction pertaining to the administration of estates of decedent residents of Veterans' Administration facilities, and, from time to time, various legislation providing for Federal exercise of less than exclusive jurisdiction in specific areas where conditions in the particular area or the character of the Federal undertaking thereon indicated the desirability of the extension of a measure of the State's jurisdiction to such areas.

Lea Act.--A 1936 statute, variously known as the Lea Act and the Hayden-Cartwright Act, amended the Federal Highway Aid Act of 1916, by providing (section 10):

> That all taxes levied by any State, Territory or the District of Columbia upon sales of gasoline and other motor

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> vehicle fuels may be levied, in the same manner and to the same extent, upon such fuels when sold by or through post exchanges, ship stores, ship service stores, commissaries, filling stations, Licensed traders, and other similar agencies, located on United States military or other reservations, when such fuels are not for the exclusive use of the United States. * * *

The legislative history of this particular section of the act is

meager and appears to be limited to matter contained in the Congressional record. It is indicated that the language of this section was sponsored by organizations of State highway and taxing officials. An amendment comprised of this language was offered by Senator Hayden, of arizona, and was read and passed by the Senate without question or debate. It is logical to assume that the amendment was inspired by the decision of the Supreme Court in the Standard Oil Company case discussed on page 178, above.

Under this section, as it was amended by the Buck Act in 1940, States are given the right to levy and collect motor vehicle fuel taxes within Federal areas, regardless of the form of such taxes, to the same extent as though such areas were not Federal, unless the fuel is for the exclusive use of the Federal Government. Sanders v. Oklahoma Tax Commission, 197 Okla. 285, 169 P.2d 748 (1946), cert. den., 329 U.S. 780. Sales to Government contractors are taxable under the act, but not sales to Army post exchanges, which are arms of the

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Federal Government and partake of its immunities under this act.

Buck Act.--Four years later, in 1940, Congress enacted a retrocession statute of wide effect. This law, commonly known as the Buck Act, retroceded to the States partial jurisdiction over Federal areas so as to permit the imposition and collection of State sale and use taxes and income taxes within Federal areas. The Federal Government and its instrumentalities were excepted.

The House of Representatives passed a bill during the first session of the 76th Congress which embodied nearly all of relating to the collection of income taxes from Federal employees residing on Federal enclaves and to an amendment of the Hayden-Cartwright Act of 1936. These additional matters were added as amendments to the House bill after Senate hearings were held. The intent behind the House bill, passed during the first session of the 76th Congress, as stated in the report accompanying the bill to the floor was:

> The purpose of H.R. 6687 is to provide for uniformity in the administration of State sales and use taxes within as well as without Federal areas. It proposes to authorize the levy of State taxes with respect to or measured by sales or purchases of tangible personal property on Federal areas. The taxes would in the vast majority of cases be paid to the State by sellers whose places of business are located off the Federal areas and who make sales of property to be delivered in such areas.
>
> The application of such taxes to the gross receipts of a retailer from sales in which delivery is made to an area

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> over which it is asserted the United States possesses exclusive jurisdiction is being vigorously contested even though the retailer's place of business is located off the Federal area and the negotiations leading to the sale are conducted and the contract of sale is executed at the retailer's place of business. Despite the existence of these facts, which are

generally sufficient to give rise to liability for the tax, and which, insofar as the theory of the tax is concerned, should, in the opinion of your committee, be sufficient to impose tax liability, exemption from the tax is asserted upon the ground that title to the property sold passes on the Federal area and, accordingly, the sale occurs on land which the State lacks authority.

Passage of this bill will clearly establish the authority of the State to impose its sales tax with respect to sales completed by delivery on Federal areas, and except insofar as the State tax might be a prohibited burden upon the United States would not, with the exception hereinafter noted, impose any duty upon any person residing or located upon the Federal area. Such action would merely remove any doubt which now exists concerning the authority of the State to require retailers located within the State and off the Federal areas to report and pay the tax on the gross receipts from their sales in which delivery is made to a Federal area. A minor problem presented with respect to the application of State sales taxes on Federal areas involves the responsibility for such taxes of post exchanges, shop-service stores, commissaries, licensed traders, and other similar agencies operating on Federal areas.

Congress, in the amendment of section 10 of the Hayden-Cartwright act, provided for the application of motor-vehicle fuel taxes with respect to the sales or distributions of such agencies. It would appear therefore to be entirely proper to provide for the application of sales

taxes with respect to the retail sales of tangible personal property of such agencies.

The State have been extremely generous in granting to the United States exclusive jurisdiction over Federal areas in order that any conflicts between the authority of the United States and a State might be avoided. It would appear to be an equally sound policy for the United States to prevent the avoidance of State sales taxes with respect to sales on Federal areas by specifically authorizing, except insofar as the taxes may constitute a burden upon the United States, the application of such taxes on those areas.

The House bill was amended by the Senate and therefore certain portions of this report must be read in the light of senate changes in the bill.

The report of the Senate committee on finance which considered the House bill is also most informative in regard to the intent of Congress in enacting the law. The Senate report gives the reasons for the general provision on the application of State sales and use taxes to Federal enclaves as:

Section 1 (a) of the committee amendment removes the exemption from sales or use taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a

Federal area. At the present time exemption from such taxes is claimed on the ground that the Federal Government has exclusive jurisdiction over such areas. Such an exemption may be claimed in the following types of cases: First, where the seller's place of business is within the Federal area and a transaction occurs there, and, second, where the seller's place of business is outside the Federal area but delivery is made in Federal area and payment received there.

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This section will remove the right to claim an exemption because of the exclusive Federal jurisdiction over the area in both these situations. The section will not affect any right to claim any exemption from such taxes on any ground other than that the Federal Government has exclusive jurisdiction over the area where the transaction occurred.

This section also contains a provision granting the State or taxing authority full jurisdiction and power to levy and collect any such sale or use tax in any Federal area within such State to the same extent and with the same effect as though such area was not a federal area. This additional authorization was deemed to be necessary so as to make it clear that the State or taxing authority had power to levy or collect any such tax in any Federal area within the State by the ordinary methods employed outside such areas, such as by judgment and execution thereof against any property of the judgment-debtor.

The provision relating to the application of State income taxes to persons residing within a Federal area or receiving income from transaction occurring on or service performed in a Federal area is explained in the Senate report on the rationale that:

Section 2 (a) of the committee amendment removes the exemption from income taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the taxpayer resides within a Federal area or receives performed in such area. One of the reasons for removing the above exemption is because of an inequity which has arisen under the Public Salary tax Act of 1939. Under that act a State is permitted to tax the compensation of officers and employees reside or are domiciled

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in that State but is not permitted to tax the compensation of such officers and employees who reside within the Federal areas within such State. For example, a naval officer who is ordered to the Naval Academy for duty and is fortunate enough to have quarters assigned to him within the Naval academy grounds is exempt from the Maryland income tax because the Naval Academy grounds are a Federal area over which the United States has exclusive jurisdiction; but his less fortunate colleague, who is also ordered there for duty and rents a house outside the academy grounds because no quarters are available inside, must pay the Maryland income tax on his Federal salary. Another

> reason for removing the above exemption, is that under the doctrine laid down in James v. Dravo Contracting Co. (302 U.S. 134, 1937), a State may tax the income or receipts from transactions occurring or services performed in an area within the State over which the United States and the State exercise concurrent jurisdiction but may not tax such income or receipts if the transactions occurred or the services were performed in an area within the State over which the United States has exclusive jurisdiction.

This section contains, for the same reasons, a similar provision to the one contained in section 1 granting the State or taxing authority full jurisdiction and power to levy and collect any such income tax in any federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

During the 1940 Senate hearings on the House bill, representatives of the War and Navy Departments expressed opposition to certain features of the bill. Vigorous attack was made on an aspect of the original bill which would have permitted the application of State sales taxes on retail sales of tangible personal property by post exchanges, ship-service stores and

commissaries. These objections were the apparent cause of an amendment which was explained by the Senate committee as follows:

> Section 3 of the committee amendment provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof. This section also provides that sections 1 and 2 shall not be deemed to authorize the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser. An authorized purchaser being a person who is permitted, under regulations of the Secretary of War or Navy, to make purchases from commissaries, ship's stores, or voluntary unincorporated organizations of Army or Navy personnel, such as post exchanges, but such person is deemed to be an authorized purchaser only with respect to such purchases and is not deemed to be an authorized purchaser within the meaning of this section when he makes purchases from organizations other than those heretofore mentioned.
>
> For example, tangible personal property purchased from a commissary or ship's store by an Army or naval officer or other person so permitted to make purchases from such commissary or ship's store, is exempt from the State sales or use tax since the commissary or ship's store is an instrumentality of the United States and the purchaser is an authorized purchaser. If voluntary unincorporated organizations of Army and Navy personnel, such as post exchanges, are held by the courts to be instrumentalities of the United States, the same rule will apply to similar purchases from such organizations;

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> but if they are held not to be such instrumentalities, property so purchased from them will be subject to the State sales or use tax in the same manner and to the same extent as if such purchase was made outside a Federal area. It may also be noted at this point that if a post exchange is not such an instrumentality, it will also be subject to the States income taxes by virtue of section 2 of the committee amendment.

It may be noted that post exchanges and certain other organizations attached to the armed forces have been judicially determined to be Federal instrumentalities. It should also be noted that the exemption provision of the Buck Act was amended somewhat by the act of September 3, 1954, 68 Stat. 1227.

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One of the Navy officers testifying at the Senate hearing raised a question as to the effect on the Federal criminal jurisdiction over federal areas of a grant to the States of concurrent jurisdiction for tax matters. The Attorney General of the United States raised the same question in commenting on the bill by letter to the Chairman of the Senate Finance Committee:

> From the standpoint of the enforcement of the criminal law, the legislation may result in an embarrassment which is probably unintended. Criminal jurisdiction of the Federal courts is restricted to Federal reservations over which the Federal Government has exclusive jurisdiction, as well as to forts, magazines, arsenals, dock-yards, or other needful buildings (U.S.C., title 18, sec. 451, par. 3d). A question would arise as to whether, by permitting the levy of sales and personal-property taxes on Federal reservations, the Federal Government has ceded back to the States its exclusive jurisdiction over Federal reservations and has retained only concurrent jurisdiction over such areas. The result may be the loss of federal criminal jurisdiction over numerous reservations, which would be deplorable.

After considerable discussion and deliberation the issue was resolved by a Senate committee amendment to the House bill adding the following provision (54 Stat., at p. 1060):

> Section 4. The provisions of this Act shall not for the purposes of any other provision of law be deemed to deprive the United States of exclusive jurisdiction over any Federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any Federal area.

The committee explained that:

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> Section 4 of the committee amendment was inserted to make certain that the criminal jurisdiction of Federal courts with

> respect to Federal ares over which the United States exercises exclusive jurisdiction would not be affected by permitting the States to levy and collect sales, use, and income taxes within such areas. The provisions of this section are applicable to all Federal areas over which the United States exercises jurisdiction, including such areas as may be acquired after the date of enactment of this act.

The Buck Act added certain amendments to the Hayden-Cartwright (Let) Act. The 1940 Senate committee report explained why those changes were considered necessary:

> Section 7 (a) of the committee amendment amends section 10 of the Hayden-Cartwright Act so that the authority granted to the States by such section 10 will more nearly conform to the authority granted to them under section 1 of this act. At the present time a State such as Illinois, which has a so-called gallonage tax on gasoline based upon the privilege of using the highways in that State, is prevented from levying such tax under the Hayden-Cartwright Act because it is not a tax upon the "sale" of gasoline. The amendments recommended by your committee will correct this obvious inequity and will permit the levying of any such tax which is levied "upon, with respect to, or measured by, sales, purchases, storage, or use of gasoline or other motor vehicle fuels."

By the Buck Act Congress took a great stride in the direction of removing the tax inequities which had resulted from the existence of Federal "islands" in the various States and, in addition, opened the way for the State and local governments to secure additional revenue.

In Howard v. Commissioners, 344 U.S. 624 (1953), the Supreme Court (by a divided court), expressed the view that the

Buck Act authorized State and local taxes measured by the income or earnings of any party "receiving income from transactions occurring or service performed in such area * * * to the same extent and with the same effect as though such area was not a Federal area." The Court of appeals of Kentucky had held that this tax was not an "income tax" within the meaning of the Constitution of Kentucky but was a tax upon the privilege of working within the city of Louisville. The Supreme Court, after stating that the issue was not whether the tax in question was an income tax within the meaning of the Kentucky law, held that the tax in question was a tax "measured by, net income, gross income, or gross receipts," as authorized by the Buck Act. In a dissenting opinion, here quoted in pertinent part to clarify this important issue in this case, it was stated (p. 629):

> I have not been able to follow the argument that this tax is an "income tax" within the meaning of the Buck Act. It is by its terms a "license fee" levied on "the privilege" of engaging in certain activities. The tax is narrowly confined to salaries, wages, commissions and to the net profits of businesses, professions, and occupations. Many kinds of income are excluded, e.g., divi-

dends, interest, capital gains. The exclusions emphasize that the tax is on the privilege of working or doing business in Louisville. That is the kind of a tax the Kentucky Court of appeals held it to be. Louisville v. Sebree, 308 Ky. 420, 214 S.W.2d 248. The Congress has not yet granted local authorities the right to tax the privilege of working for or doing business with the United States.

In another case in which a State claimed taxing authority under the Buck Act, a steel company which occupied a plant under lease from the Federal Government was thereby held subject to a State occupation tax under the act. Carnegie-Illinois Steel Corp. v. Alderson, 127 W.Va. 807, 34 S.E.2d 737 (1945), cert. den., 326 U.S. 764. It has also been held that a tax on gasoline received in a State, within a Federal area, was a "sales or use" tax within the purview of the act, and that by the act the Congress retroceded to States sufficient sovereignty over Federal areas within their territorial limits to enable them to levy and collect the taxes described in the act. Davis v. Howard, 306 Ky. 149, 290 S.W.2d 467 (1947). In Maynard & Child, Inc. v. Shearer, 290 S.W.2d 790 (Ky., 1956), it was held that an import tax was not such a tax as Congress had consented to be collected by its enactment of the Buck Act. In Bowers v. Oklahoma Tax Commission, 51 F.Supp. 652 (W.D. Okla., 1943), a construction contractor was held to "use" material incorporated into the work, so as to subject him to a State use tax pursuant to the Buck Act. The Attorney General of Wyoming has ruled that the State use tax was not applicable to an auto purchased out of the State for private use on an exclusive Federal jurisdiction area within the State. Op.A.G., Wyo. (Dec. 9, 1947).

There appear to be no other instances of general importance in which the character of State taxes as within the purview of the Buck Act has been questioned in the courts.

An early, and leading, case relating to the effect of the Buck Act on State taxing authority is Kiker v. Philadelphia, 346 Pa. 624, 31 A.2d 289 (1943), cert. den., 320 U.S. 741. In that case there was interposed as a defense against application of an income tax of the city of Philadelphia, to a non-resident of the city employed in an area within the city limits but under the exclusive legislative jurisdiction of the United States, the fact that the non-resident received no quid pro quo for the tax. The court found the availability of services to be an answer to this defense. The court also appears to have overcome any difficulty, and in these matters its views apparently are sustained by the Howard case, supra, and other decisions, in objections raised to the application of the tax in a vigorous dissenting opinion in this case that (1) the city, as distinguished from the State, could not impose a tax under the Buck Act, and (2) that a State grant to the federal Government of legislative jurisdiction over an area placed such area outside the sovereignty (and individuals and property within the area beyond the taxing power) of the State.

Military Leasing Act of 1947.--The Wherry Housing Act of

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1949, in pertinent part, makes provision for arrangements whereby military areas (including, of course, such areas under the exclusive legislative jurisdiction of the United States) may be leased to private individuals for the construction of housing for rental to military personnel. The authority to lease out military areas for the construction of such housing was supplied by the Military Leasing Act of 1947, a provision of which (section 6) read as follows:

> The lessee's interest, made or created pursuant to the provisions of this Act, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of this Act shall contain a provision that if and to the extent that such property is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated.

The legislative histories of both the 1947 and the 1949 statutes are devoid of authoritative information for measuring the extent of the taxing authority granted to the States, with the result that ambiguities in the language of the statutes which shortly became apparent led a number of conflicting court decisions, and other at least seemingly inconsistent interpre-

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tation. The ambiguity as to whether the federally granted tax authority with respect to leasehold interests extended to such interests located on lands under the exclusive legislative jurisdiction of the United States was resolved, however, by the decision of the Supreme Court of the United States in the case of Offutt Housing Company v. Sarpy County, 351 U.S. 253 (1956). The court stated (p. 259):

> * * * To be sure, the 1947 Act does not refer specifically to property in an area subject to the power of "exclusive Legislation" by Congress. It does, however, govern the leasing of Government property generally and its permission to tax extends generally to all lessees' interests created by virtue of the Act. The legislative history indicates a concern about loss of revenue to the States and a desire to prevent unfairness toward competitors of the private interests that might otherwise escape taxation. While the latter consideration is not necessarily applicable where military housing is involved, the former is equally relevant to leases for military housing as for any other purpose. We do not say that this is the only admissible construction of these Acts. We could regard Art. I, Sec. 8, cl. 17 as of such overriding and comprehensive scope that consent by Congress to state taxation of obviously valuable private interests located in an area subject to the power of "exclusive Legislation" is to be found only in explicit

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> and unambiguous legislative enactment. We have not heretofore so regarded it, sec S.R.A., Inc. v. Minnesota. 327 U.S. 558;

> Baltimore Shipbuilding Co. v. Baltimore, 1095 U.S. 375, nor are we constrained by reason to treat this exercise by Congress of the "exclusive Legislation" power and the manner of construing it any differently from any other exercise by Congress of that power. This is one of cases in which Congress has seen fit not to express itself unequivocally. It has preferred to use general language and thereby requires the judiciary to apply this general language to a specific problem. To that end we must resort to whatever aids to interpretation the legislation in its entirety and its history provide. Charged as we are with this function, we have concluded that the more persuasive construction of the statute, however flickering and feeble the light afforded for extracting its meaning, it that the States were to be permitted to tax private interests, like those of this petitioner, in housing projects located on areas subject to the federal power of "exclusive Legislation." We do not hold that Congress has relinquished this power over these areas. We hold only that Congress, in the exercise of this power, has permitted such state taxation as is involved in the present case.

The opinion of the Supreme Court in the Offutt case, it seems clear, was restricted to an interpretation of the statutes involved, with particular reference tot he language of the quoted portion of the opinion any Federal statute authorizing a State to exercise power previously denied to it might be construed, in the absence of indication of a positive contrary legislative intent, as authorizing the exercise of such power not only outside of areas under exclusive Federal legislative jurisdiction, but also within such areas. Under this construction the States need not have awaited the enactment of the Buck Act before taxing the income of Federal employees in areas under exclu-

sive Federal legislative jurisdiction, since Congress had previously authorized State taxation of incomes of Federal employees generally.

Workmen's compensation.--In 1936 there was enacted a statute permitting the application of State workmen's compensation laws to Federal areas. Both House and Senate reports on the bill contained concise explanatory remarks concerning the reasons for the act. The House report, the more extensive of the two, sets forth the circumstances which motivated congressional action. The pertinent portions of the report are:

> The Committee on Labor, to whom was referred the bill (H.R. 12599) to provide more adequate protection to workmen and laborers on projects, buildings, constructions, improvements, and property wherever situated, belonging to the United States of America, by granting to several States jurisdiction and authority to enter upon and enforce their State workmens' compensation, safety, and insurance laws on all property and premises belonging to the United States of America, having had the bill under consideration, report it back to the House with a recommendation that it do pass.
>
> This bill is absolutely necessary so that protection can be given to men employed on projects as set out in the foregoing

paragraph.

As a specific example, the Golden Gate Bridge, now under construction at San Francisco, which is being financed by a district consisting of several counties of the State of California, the men are almost constantly working on property belonging to the Federal Government either on the Presidio Military Reservation on

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the San Francisco side of the Golden Gate, or the Fort Baker Military Reservation on the Marin County side of the Golden Gate.

A number of injuries have occurred on this project and private insurance companies with whom compensation insurance has been placed by the contractors have recently discovered two decisions--one by the Supreme Court of the United States and one by the Supreme Court of California--which seem to hold that the State Compensation Insurance Acts do not apply, leaving the workers wholly unprotected, except for their common-law right of action for personal injuries which would necessitate action being brought in the Federal courts. In many cases objection to the jurisdiction of the industrial accident commission has been raised over 1 year after the injury occurred and after the statute of limitations has run against a cause of action for personal injuries. This status of the law has made it possible for the compensation insurance companies to negotiate settlement with the workers on a basis far below what they would ordinarily be entitled. The situation existing in this locality is merely an example of the condition that exists throughout the United States wherever work is being performed on Federal property.

The Senate report very briefly states the problem in these words:

The purpose of the amended bill is to fill a conspicuous gap in the workmen's compensation field by furnishing protection against death or disability to laborers and mechanics employed by contractors or other persons on Federal property. The United States Employees' Compensation Act covers only persons directly employed by the Federal Government. There is no general General statute applying the work-

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men's compensation principle to laborers and mechanics on Federal projects, and although the right of workmen to recover under State compensation laws for death or disability sustained on Federal property has been recognized by some of the courts, a recent decision of the United States Supreme Court (see Murray v. Gerrick, 291 U.S. 315), has thrown some doubts upon the validity of these decisions by holding that a Federal statute giving a right of recovery under State law to persons injured or killed on Federal property refers merely to actions at law. Hence, it was held that this statute (act of Feb. 1, 1928, 45

> Stat. 54, U.S.C., ti. 16, sec. 457) did not extend State workmen's compensation acts to places exclusively within the jurisdiction of the Federal Government.

The bill, as passed by the House, contained provisions subjecting Federal property to State safety and insurance regulations and permitting State officers to enter Federal property for certain purposes in connection with the act. The Senate committee suggested changes and deletions in these provisions which were approved by the Senate. The House concurred in the amendments, with no objections and with only a general explanation of their purpose prior to such action.

While in some few instances State workmen's compensation laws had been held applicable in exclusive Federal jurisdiction areas under a 1928 Federal statute or under the international law rule, the case of Murray v. Gerrick & Co., 291 U.S. 315 (1934), it was noted in the legislative reports on this subject, held workmen's compensation laws inapplicable in such areas.

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The 1936 Federal statute authorized States to apply their workmen's compensation laws in these areas, but required legislative action by the States for accomplishment of this purpose; however, where a State had an appropriate law already in effect, but held in abeyance in an area because of federal possession of legislative jurisdiction over the area, Federal enactment of this statute activated the State law without the necessity of any action by the State. Capetola v. Barclay White Co., 139 F.2d 556 (C.A. 3, 1943), cert. den., 321 U.S. 799. The statute was not applicable to causes of action arising before its passage, however. State workmen's compensation laws are authorized by this statute to be applied to employees of contractors engaged in work for the Federal Government. The statute does not, however, permit application of State laws to persons covered by provisions of the Federal Employees' Compensation Law, or, it has been held, to employees of Federal instrumentalities.

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Unemployment compensation.--The provision for application of State unemployment compensation laws in Federal areas was enacted as a portion of the Social Security act Amendments of 1939:

> No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

The provision probably was born out of litigation, then pending in Arkansas courts, wherein the United States Supreme Court later upheld imposition of a State unemployment compensation tax upon a person operating in an area under Federal legislative jurisdiction only upon the basis of jurisdiction to tax property retroceded to or reserved by the State with respect to such area. Buckstall Bath House Co. v.

McKinley, 308 U.S. 358 (1939). Other provisions require certain Federal instrumentalities to comply with State unemployment compensation laws.

An example of the paucity of information as to congressional intent and purpose in the provisions of the Social Security Act Amendments of 1939 effecting retrocession of jurisdiction is the brief statement in the House report on this section:

> Subsection (d) authorizes the States to cover under their unemployment compensation laws services performed upon land held by the Federal Government, such as services for hotels located in national parks.

The Senate report is identical. Although extensive hear-

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ings covering some 2,500 pages were held on the bill, very few references were made to the purpose of this particular section. The provision was inserted on the recommendation of the Social Security Board in its written report to the President of the United States. During the latter stages of the hearings the Chairman of the Social Security Board explained that:

> Item 8: We suggest that the States be authorized to make their unemployment compensation laws applicable to persons employed upon land held by the Federal Government, such as employees of the hotels in the National Parks. That is the same policy that the Congress has pursued in the past, in making all workmen's compensation laws applicable to such employees, such as the employees of concessionaires in the National Parks and on other Federal properties.

This quotation indicates that provision was included "to fill a conspicuous gap" in the unemployment compensation field. As it had done before, Congress followed a precedent. Here that precedent was the statute dealing with the application of workmen's compensation laws to Federal enclaves. Coverage was legislation was at all worthy it should protect as many people as possible.

Under this statute, it has been held, a Government contractor is required to make State unemployment insurance contributions with respect to persons employed by him on an area over which the United States exercises exclusive legislative jurisdiction. And post exchanges, ships' service stores, officers' messes and similar entities are required to pay the unem-

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ployment taxes, it has been held, although they are Government instrumentalities, on the ground that they do not come within an exception for "wholly owned" instrumentalities.

CHAPTER VIII

RESIDENTS OF FEDERAL ENCLAVES

EFFECTS OF TRANSFERS OF LEGISLATIVE JURISDICTION: In general.--With the transfer of sovereignty, which is implicit in the transfer of exclusive legislative jurisdiction, from a State to the Federal Government, the latter succeeds to all the authority formerly held by the State with respect to persons within the area as to which jurisdiction was transferred, and such persons are relieved of all their obligations to the State. Where partial jurisdiction is transferred, the Federal Government succeeds to an exclusive right to exercise some authority formerly possessed by the State, and persons within the area are relieved of their obligations to the State under the transferred authority. And transfer of legislative jurisdiction from a State to the Federal Government has been held to affect the rights, or privilege, as well as the obligations, of persons under State law. specifically, it has been held to affect the rights of residents of areas over which jurisdiction has been transferred to receive an education in the public schools, to vote and hold public office, to sue for a divorce, and to have their persons, property, or affairs subjected to the probate or lunacy jurisdiction of State courts; it has also been interpreted as affecting the right of such residents to receive various other miscellaneous services ordinarily rendered by or under the authority of the State.

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Education.--The question whether children resident upon areas under the legislative jurisdiction of the Federal Government are entitled to a public school education, as residents of the State within the boundaries of which the area is contained, seems first to have been presented to the Supreme Judicial Court of Massachusetts in a request for an advisory opinion by the Massachusetts House of Representatives. The House sought the view of the court on the question, inter alia:

> Are persons residing on lands purchased by, or ceded to, the United States, for navy yards, arsenals, dock yards, forts, light houses, hospitals, and armories, in this Commonwealth, entitled to the benefits of the State common schools for their children, in the towns where such lands are located?

The opinion of the court (Opinion of the Justices, 1 Metc. 580 (Mass., 1841)), reads in pertinent parts as follows (pp. 581-583):

> The constitution of the United States, Art. 1, Sec. 8, provides that congress shall have power to exercise exclusive legislation in all cases whatsoever, over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings. The jurisdiction in such cases is

> put upon the same ground as that of district ceded to the United States for the seat of government; and, unless the consent of the several States is expressly made conditional or limited by the act of cession, the exclusive power of legislation implies an exclusive jurisdiction; because the laws of the several States no longer operate within those districts.
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> and consequently, that no persons are amenable to the laws of the Commonwealth for crimes and offences committed within said territory, and that persons residing

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> within the same do not acquire the civil and political privileges, nor do they become subject to the civil duties and obligations of inhabitants of the towns within which such territory is situated.

The court then proceeded to apply the general legal principles which it had thus defined to the specific question concerning education (p. 583):

> We are of opinion that persons residing on lands purchased by, or ceded to, the United States for navy yards, forts and arsenals, where there is no other reservation of jurisdiction to the State, then that above mentioned [service of process], are not entitled to the benefits of the common schools for their children, in the towns in which such lands are situated.

The nest time the question was discussed by a court it was again in Massachusetts, in the case of Newcomb v. Rockport, 183 Mass. 74, 66 N.E. 587 (1909). There, however, while the court explored Federal possession of legislative jurisdiction as a possible defense to a suit filed to require a town to provide school facilities on two island sites of lighthouses, the court's decision adverse to the petitioners actually was based on an absence of authority in the town to construct a school, and the possession of discretion by the town as to whether it would furnish transportation, under Massachusetts law, even conceding that the Federal Government did not have exclusive jurisdiction over the islands in question. The legal theories underlying the two Massachusetts cases mentioned above have constituted the foundation for all the several decisions on rights to public schooling of children resident on Federal lands. Where the courts have found that

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legislative jurisdiction over a federally owned area has remained in the State, they have upheld the right of children residing on the area to attend State schools on an equal basis with State children generally; where the courts have fond that legislative jurisdiction over an area has been vested in the United States, they denied the existence of any right in children residing on the area to attend public schools, on the basis, in general, that Federal acquisition of legislative jurisdiction over an area places the area outside the State or the school district, whereby the residents of the area are not residents of the State or of the school district. Further, where

a school building is located on an area of exclusive Federal jurisdiction it has been held (Op.A.G., Ind., p. 259 (1943)) the local school authorities have no jurisdiction over the building, are not required to furnish school facilities for children in such building, and if they do the latter with

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money furnished by the Federal Government they are acting as Federal agents. There should be noted, however, the small number of instances in which the right of children residing in Federal areas to a public school education has been questioned in the courts. This appears to be due in considerable part to a feeling of responsibility in the States for the education of children within their boundaries, reflected in such statutes as the 1935 act of Texas (Art. 275b, Vernon's Ann. Civil Statutes), which provides for education of children on military reservations, and section 79-446 of the Revised Statutes of Nebraska (1943), which provides for admission of children of military personnel to public schools without payment of tuition. In recent years a powerful factor in curtailing potential litigation in this field has been the assumption by the Federal Government of a substantial portion of the financial burden of localities in the operation and maintenance of their schools, based on the impact which Federal activities have on local educational agencies, and without regard to the jurisdiction status of the Federal area which is involved. Voting and office holding.--The Opinion of the Justices, 1 Metc. 580 (Mass., 1841), anticipated judicial decisions concerning the right of residents of Federal enclaves to vote,

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as it anticipated decisions relating to their rights to a public school education and in several other fields. One of the questions propounded to the court was:

> Are persons so residing [on lands under the exclusive jurisdiction of the United States] entitled to the elective franchise in such towns [towns in which such lands are located]?

After stating that persons residing in areas under exclusive Federal jurisdiction did not acquire civil and political privileges thereby, the court said (p. 584):

> We are also of the opinion that persons residing in such territory do not thereby acquire any elective franchise as inhabitants of the towns in which such territory is situated.

The question of the right of residents of a Federal enclave to vote, in a county election, came squarely before the Supreme Court of Ohio, in 1869, in the case of Sinks v. Reese, 19 Ohio St. 306 (1869). Votes cast by certain residents of an asylum for former military and naval personnel were not counted by election officials, and the failure to count them was assigned as error. The State had consented to the purchase of the lands upon which the asylum was situated, and had ceded jurisdiction over such lands.

However, the act of cession provided that nothing therein should be construed to prevent the officers, employees, and inmates of the

asylum from exercising the right of suffrage. The court held that under the provisions of the Constitution of the United States and the cession act of the State of Ohio the grounds of the asylum had been detached and set off from the State, that the Constitution of the State of Ohio required that electors be residents of the State, that it was not constitutionally permissible for the general assembly of the State to confer the elective franchise upon

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non-residents, and that all votes of residents of the area should therefore be rejected. The Opinion of the Justices and the decision in Sinks v. Reese have been followed, resulting in a denial of the right of suffrage to residents of areas under the legislative jurisdiction of the United States, whatever the permanency of their residence, in nearly all cases where the right of such persons to vote, through qualification by residence on the Federal area, has been questioned in the courts. In some other instances, which should be distinguished, the disqualification has been based on a lack of permanency of the residence (lack of domicile) of persons resident on a Federal area, without reference to the jurisdictional status of the area, although in similar instances the courts have held that residence on a Federal area can constitute a residence for voting purposes. The courts have generally ruled that residents of a federally owned area may qualify as voters where the Federal Government has never

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acquired legislative jurisdiction over the area, where legislative jurisdiction formerly held by the Federal Government has been retroceded by act of Congress, or where Federal legislative jurisdiction has terminated for some other reason. Attorneys General of several States have had occasion to affirm or deny, on similar grounds, the right of residents of federally owned areas to vote. In Arapajolu v. McMenamin, 113 Cal. App.2d 824, 249 P.2d 318 (1952), a group of residents, military and civilian, of various military reservations situated in California, sought in an action of mandamus to procure their registration as voters. The court recognized (249 P.2d at pp. 319-320) that it had been consistently held that when property was acquired by the

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United States with the consent of the State and consequent acquisition of legislative jurisdiction by the Federal Government the property "ceases in legal contemplation to be a part of the territory of the State and hence residence thereon is not residence within the State which will qualify the resident to be a voter therein." Reviewing the cases so holding, the court noted that all but one, Arledge v. Mabry, supra, had been decided before the United States had retroceded to the States, with respect to areas over which it had legislative jurisdiction, the right to apply State unemployment insurance acts, to tax motor fuels, to levy and collect use and sales taxes, and to levy and collect income taxes. In Arledge v. Mabry,

the court suggested, the retrocession had not been considered and the case had been decided (erroneously) on the basis that the United States still had and exercised exclusive jurisdiction. The court concluded (149 P.2d 323):

> The jurisdiction over these lands is no longer full or complete or exclusive. A substantial portion of such jurisdiction now resides in the States and such territory can no longer be said with any support in logic to be foreign to California or outside of California or without the jurisdiction of California or within the exclusive jurisdiction of the United States. It is our conclusion that since the State of California now has jurisdiction over the areas in question in the substantial particulars above noted residence in such areas is residence within the State of California entitling such residents to the right to vote given by sec. 1, Art. II of our Constitution.

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The several cases discussed above all related to voting, rather than office-holding, although the grounds upon which they were decided clearly would apply to either situation. The case of Adams v. Londeree, 139 W.Va. 748, 83 S.E.2d 127 (1954), on the other hand, involved directly the question whether residence upon an area under the legislative jurisdiction of the United States qualified a person to run for and hold a political office the incumbent of which was required to have status as a resident of the State. The court said (83 S.E.2d at p. 140) that "in so far as this record shows, the Federal Government has never accepted, claimed or attempted to exercise, any jurisdiction as to the right of any resident of the reservation [as to which the State had reserved only the right to serve process] to vote." Hence, the majority held, a resident of the reservation, being otherwise qualified, was entitled to vote at a municipal, county, or State election, and to hold a municipal, county, or State office. A minority opinion filed in this case strongly criticizes the decision as contrary to judicial precedents and unsupported by any persuasive text or case authority.

While Arapajolu v. McMenamin and Adams v. Londeree apparently are the only judicial decisions recognizing the existence of a right to vote or hold office in persons by reason of their residence on what has been defined for the purposes of this text as an exclusive Federal jurisdiction area, reports form Federal agencies indicate that residents of such areas under their supervision in many instances are permitted to vote and a few States have by statute granted voting rights to such residents (e.g., California, Nevada (in some instances), New Mex-

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ico, and Ohio (in case of employees and inmates of disabled soldiers' homes)). On the other hand, one State has a constitutional prohibition against voting by such persons, decisions cited above demonstrate frequent judicial denial to residents of exclusive Federal jurisdiction areas of the right to vote, and it is clear that many thousand residents of Federal areas are disenfranchised by reason of Federal possession of legislative jurisdiction over such areas.

Divorce.--The effect upon a person's right to receive a divorce of such person's residence on an area under the exclusive legislative jurisdiction of the United States was the subject of judicial decision for the first time, it appears, in the case of Lowe v. Lowe, 150 Md. 592, 133 Atl. 729 (1926). The statute of the State of Maryland which provided the right to file proceedings for divorce required residence of at least one of the parties in the State. The parties to this suit resided on an area in Maryland acquired by the Federal Government which was subject to a general consent and cession statute whereby the State reserved only the right to serve process, and were not indicated as being residents of Maryland unless by virtue of their residence on this area.

Reviewing judicial decisions and other authorities holding to the general effect that the inhabitants of areas under the exclusive legislative jurisdiction of the Federal Government (133 Atl. at p. 732) "cease to be inhabitants of the state and can no longer exercise any civil or political rights under the laws of the state," and that such areas themselves (ibid., p. 733) "cease to be a part of the state," the court held that residents of areas under exclusive Federal jurisdiction are not such residents of the State as would entitle them to file a bill for divorce. The case of Chaney v. Chaney, 53 N.M. 66, 201 P.2d 782

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(1949), involved a suit for divorce, with the parties being persons living at Los Alamos, New Mexico, on lands acquired by the Federal Government which were subject to a general consent statute whereby the State of New Mexico reserved only the right to serve process. The State divorce statute provided that the plaintiff "must have been as actual resident, in good faith, of the state for one (1) year next preceding the filing of his or her complaint * * *."

The court, applying Arledge v. Mabry, held concerning the area under Federal legislative jurisdiction that "such land is not deemed a part of the State of New Mexico," and that "persons living thereon do not thereby acquire legal residence in New Mexico." Accordingly, following Lowe v. Lowe, supra, it found that residence on such area did not suffice to supply the residence requirement of the State divorce statute.

The Lowe and Claney cases appear to be the only cases in which a divorce was denied because of the exclusive Federal jurisdiction status of an area upon which the parties resided. However, in a number of cases, some involving Federal enclaves, it has been held that personnel of the armed forces (and their wives) are unable, because of the temporary nature of their residence on a Government reservation to which they have been ordered, to establish on such reservation the residence or domicile required for divorce under State statutes.

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(1933), where the court suggested the existence of substantive divorce law as to Fort Benning, Georgia, under the international law rule, since the United States had exclusive legislative jurisdiction over the area, but held that there were absent in the State a domicile of the parties and a forum for applying the law. The Lowe,

Chaney, Pendleton, and Dicks decisions had an influence on the enactment, in the several States involved, of amendments to their divorce laws variously providing a venue in courts of the respective States to grant divorces to persons resident on Federal areas. Similar statutes have been enacted in a few other States.

The case of Graig v. Graig, 143 Kan. 624, 56 P.2d 464 (1936), clarification denied, 144 Kan. 155, 58 P.2d 1101 (1936), brought after amendment of the Kansas law, provides a sequel to the decision in the Pendleton case. The court ruled in the Graig case that the Kansas amendment, which provided that any person who had resided for one year on a Federal military reservation within the State might bring an action for divorce in any county adjacent to the reservation, required mere "residence" for this purpose, not "actual residence" or domicile," with their connotations of permanence. The amendment, the court said in directing the entry of a decree of divorce affecting an Army officer and his wife residing on Fort Riley, provided a forum for applying the law of divorce which had existed at the time of cession of jurisdiction over the military reservation to the Federal Government. The Dicks case similarly has as a sequel the case of Darbie v.

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Darbie, 195 Ga. 769, 25 S.E.2d 685 (1943). In the Darbie case a Georgia amendment to the same effect as the Kansas amendment was the basis for the filing of a divorce suit by an Army officer residing on Fort Benning. The divorce was denied, but apparently only because the petition was filed in a county which, although adjacent to Fort Benning, was not the county wherein the fort was situated, and therefore the filing was held not in conformity with a provision of the Georgia constitution (art. 6, ch 2-43, sec. 16) requiring such suits to be brought in the county in which the parties reside. The Georgia constitution has been amended (see sec. 2-4901) so as to eliminate the problem encountered in the Darbie case, and, in any event, because of its basis the decision in the case casts no positive judicial light on the question whether the State has jurisdiction to furnish a forum and grant a divorce to residents of an area under exclusive Federal jurisdiction.

The case of Crownover v. Crownover, 58 N.M. 597, 274 P.2d 127 (1954), furnishes a sequel to the Chaney case. The Crownover case was brought under the New Mexico amendment, which provides that for the purposes of the State's divorce laws military personnel continuously stationed for one year at a base in New Mexico shall be deemed residents in good faith of the State and of the county in which the base is located. The court affirmed a judgment granting a divorce to a naval officer who, while he was stationed in New Mexico, was physically absent from the State for a substantial period of time on temporary duty, holding that the "continuously stationed" requirement of the statute was met by the fact of assignment to a New Mexico base as permanent station. An

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objection that "domicile" within the State (not established in the case except through proof of residence under military orders) is an essential base for the court's jurisdiction in a divorce action was met by the court with construction of the New Mexico amendment as

creating a conclusive statutory presumption of domicile. The opinion rendered by the court, and a scholarly concurring opinion rendered by the chief justice (58 N.M. 609), defended the entitlement of the court's decision to full faith and credit by courts of other States. Military personnel and, indeed, civilian Federal employees and others residing on exclusive Federal jurisdiction areas may possibly retain previously established domiciles wherein would lie a venue for divorce. It may well occur, however, that such a person has no identifiable domicile outside an exclusive jurisdiction area. Federal courts, other than those for the District of Columbia, and for Territories, have no jurisdiction over divorce. A resident of an exclusive jurisdiction area therefore may have recourse only to a State court in seeking the remedy of divorce. Absent a bona fide domicile within the jurisdiction of the court of at least one of the parties, there is the distinct possibility that a divorce decree may be collaterally attacked successfully in a different jurisdic-

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tion. As to persons residing on exclusive Federal jurisdiction areas, therefore, it would seem that even if there is avoided an immediate denial of a divorce decree on the precedent of the Lowe and Chaney cases, the theory of these cases may possibly be applied under the decision in Williams v. North Carolina, 325 U.S. 226 (1945), to invalidate any decree which is procured.

Probate and lunacy proceedings generally.--In the case of Lowe v. Lowe, discussed above, Chief Justice Bond, in an opinion concurring in the court's holding that it had no jurisdiction to grant a divorce to residents of an exclusive Federal jurisdiction area, added concerning such persons (150 Md. 592, 603, 133 A. 729, 734): "and I do not see any escape from the conclusion that ownership of their personal property, left at death, cannot legally be transmitted to their legatees or next of kin, or to any one at all; that their children cannot adopt children on the reservations; that if any of them should become insane, they could not have the protection of statutory provisions for the care of the insane--and so on, through the list of personal privileges, rights, and obligations, the remedies for which are provided for residents of the state."

On the other hand, in Divine v. Unaka National Bank, 125 Tenn. 98, 140 S.W. 747 (1911), it was asserted that the power to probate the will of one who was domiciled, and who had died, on lands under the exclusive legislative jurisdiction of the United States was in the local State court. In In re Kernan, 247 App. Div. 664, 288 N.Y.Supp. 329 (1936), a New York court held that the State's courts could determine, by habeas corpus proceedings, the right to custody of an infant

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who lived with a parent on an area under exclusive Federal jurisdiction. In both these cases the reasoning was to the general effect that, while the Federal Government had been granted exclusive legislative jurisdiction over the area of residence, it had not chosen to exercise jurisdiction in the field involved, and the State therefore could furnish the forum, applying substantive law under the international law rule.

In Shea v. Gehan, 70 Ga.App. 229, 28 S.E.2d 181 (1943), the Court of Appeals of Georgia decided that a county court had jurisdiction to commit a person to the United States Veterans' Administration Hospital in the county as insane, although such hospital was on land ceded to the United States and the person found to be insane was at the time a patient in the hospital and a non-resident of Georgia. The decision in this case was based on a their that State courts have jurisdiction over non-resident as well as resident lunatics found within the State, but the exclusive Federal jurisdiction status of the particular area within the boundaries of the State on which the lunatic here was located does not seem to have attracted the attention of the court. These appear to be the only judicial decisions, Federal or State, other than the divorce cases discussed above, wherein there has been a direct determination on the question of existence of jurisdiction in a State to carry on a probate proceeding on the basis of a residence within the boundaries of the State on an exclusive Federal jurisdiction area.

On one occasion, where no question of Federal legislative

jurisdiction was raised, the Attorney General of the United States held that the property of an intestate who had lived on a naval reservation should be turned over to an administrator appointed by the local court, but in a subsequent similar instance, where Federal legislative jurisdiction was a factor, he held that the State did not have probate jurisdiction. And in a letter dated April 15, 1943, to the Director of the Bureau of the Budget, the Attorney General stated:

> It is intimated in the [Veterans' Administration] Administrator's letter to you that the States probably have probate jurisdiction over Federal reservations. I am unable to concur in this suggestion. This Department is definitely opinion by one of my predecessors (19 Ops.A.G. 247) it was expressly held, after a thorough review of the authorities and all the pertinent considerations, that State courts do not have probate jurisdiction over Federal reservations. While there is one case holding the contrary (Divine v. Bank, 125 Tenn. 98), nevertheless the Attorney General's opinion must be considered binding on the Executive branch of the Federal Government unless and until the Federal courts should take an opposite view of the matter.

The Judge Advocate General of the Army has held similarly, and in several opinions he has stated that: "Generally, the power and concomitant obligation to temporarily restrain and care for persons found insane in any area rests with the Government exercising legislative jurisdiction over that area; permanent care or confinement is more logically assumed by the Government exercising general jurisdiction over the area of the person's residence." The Judge Advocate General of the Navy

has held, to the same effect, that in view of the fact that the United States has exclusive jurisdiction over the site of the

Philadelphia Navy Yard, it would be inconsistent to request assistance of State authorities to commit as insane a person who committed a homicide within the reservation.

It is evident that questions regarding the probate jurisdiction of a State court with relation to a person residing on an exclusive Federal jurisdiction area would not arise in instances where the persons is domiciled within the State as a result of factors other than mere residence on the Federal area. But it appears that some persons have no domicile except on a Federal area. Presumably in recognition of this fact, a number of States have enacted statutes variously providing a forum for the granting of some degree of probate relief to residents of Federal areas. Except as to such statutes relating to divorce, discussed earlier herein, appellate courts appear not to have had occasion to review the aspects of these statues granting such relief.

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It is evident, also, that the jurisdictional question is not likely to arise in States under the statutes of which residence or domicile is not a condition precedent to the assumption of probate jurisdiction by the courts. So, in Bliss v. Bliss, 133 Md. 61, 104 Atl. 467 (1918), it was stated (p. 471): "as the jurisdiction of the courts of equity to issue writs de lunatico unquirendo is exercised for the protection of the community, and the protection of the person and the property of the alleged lunatic, there is no reason why it should be confined to cases in which the unfortunate persons are residents of or have property in the state. It is their presence within the limits of the state that necessitates the exercise of the power to protect their persons and the community in which they may be placed, and the jurisdiction of the court does not depend upon whether they also have property within the state. The Uniform Veterans Guardianship Act, all or some substantial part of which has been adopted by approximately 40 States, section 18 of which provides for commitment to the Veterans' Administration or other agency of the United States Government for care or treatment of persons of unsound mind or otherwise in need of confinement who are eligible for such acre or treatment, furnishes an example of State statutes which do not specify a

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requirement for domicile or residence within the State for eligibility for probate relief.

A dearth of decisions on questions of the jurisdiction of State courts to act as a forum for probate relief to residents of exclusive Federal jurisdiction areas makes it similarly evident that potential legal questions relating to forum and jurisdiction usually remain submerged. So, Chief Justice Bond in his opinion in the Lowe case discussed above. stated (133 A. 729, 734): "It has been the practice in the orphans' court of Baltimore City to receive probate of wills, and to administer on the estates, of persons resident at Ft. McHenry, and it has also, I am informed, been the practice of the orphans' court of Anne Arundel county to do the same thing with respect to wills and estates of persons claiming residence within the United States Naval Academy grounds. We have no information as to the practice elsewhere, but it would seem to me inevitable that the

practice of the courts generally must have been to provide such necessary incidents to life on reservations within the respective states. Several Federal agencies have been granted congressional authority enabling disposition of the personal assets of patients and members of their establishments. This has curtailed

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what otherwise would constitute numerous and pressing problems. However, notwithstanding the holdings in the Divine, Kernan, and Shea cases, and in several divorce proceedings there appear to exist other serious legal and practical problems relating to procurement by or with respect to residents of exclusive federal jurisdiction areas of relief ordinarily made available by probate courts. While such relief is in instances essential, the federal courts, except those of the District of Columbia, have no probate jurisdiction. And because of the possibility that relief procured in a State court may be subject to collateral attacking a different State, it will not be clear until a decision of the Supreme Court of the United States is had on the matter whether even a decree rendered under an enabling State statute (except a statute reserving jurisdiction sufficient upon which to render the relief) must be accorded full faith and credit by other States when the residence upon which the original court based its jurisdiction upon an area under exclusive Federal jurisdiction."

Miscellaneous rights and privileges. The Opinion of the Justices, 1 Metc. 580 (Mass., 1841)., discussed at several points above, held that residence on an exclusive Federal jurisdiction

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area, for any length of time, would not give persons so residing or their children a legal inhabitancy in the town in which such area was located for the purpose of their receiving support under the laws of the Commonwealth for the relief of the poor. Numerous miscellaneous rights and privileges, other than those hereinbefore discussed, are often reserved under the laws of the several States for residents of the respective States. Among these are the right or privilege of employment by the State or local governments, of receiving a higher education at State institutions free or at a favorable tuition, of acquiring hunting and fishing licenses at low cost, of receiving visiting nurse service or care at public hospitals, orphanages, asylums, or other institutions, of serving on juries, and of acting as an executor of a will or administrator of an estate. Different legal rules may apply, also, with respect to attachment of property of non-residents.

It has been declared by many authorities and on numerous occasions, other than in decisions heretofore cited in this chapter, that areas under the exclusive legislative jurisdiction of the United States are not a part of the State in which they are embraced and that residents of such areas consequently are not entitled to civil or political privileges, generally, as State residents. Accordingly, residents of Federal areas are subject to these additional disabilities except in the States reserving civil and political rights to such residents (California and, in certain instances, Nevada), when legislative jurisdiction over

the areas is acquired by the Federal Government under existing State statutes. The potential impact of any widespread practice of discrimination in certain of these matters can be measured in part by the fact that there are more than 43,000 acres of privately owned lands within National Parks alone over which some major measure of jurisdiction has been transferred to the Federal Government. It appears, however, that such discriminations are not uniformly practiced by State and local officials, and no judicial decisions have been found involving litigation over matters other than education, voting and holding elective State office, divorce, and probate jurisdiction generally.

CONCEPTS AFFECTING STATUS OF RESIDENTS: Doctrine of extraterritoriality.--It may be noted that the decisions denying to residents of exclusive Federal jurisdiction areas right or privileges commonly accorded State residents of so on the basis that such areas are not a part of the State, and that residence thereon therefore does not constitute a person a resident of the State. This doctrine of extraterritoriality of such areas was enunciated in the very earliest judicial decision relating to the status of the areas and their residents, Commonwealth v. Clary, 8 Mass. 72 (1811). The decision was followed in Mitchell v. Tibetts, 17 Pick. 298 (Mass., 1936), and the two decisions were the basis of the Opinion of the Justices, 1 Metc. 580 (Mass., 1841). Subsequent decisions to the same effect invariably cite these cases, or cases based upon them, as authority for their holdings. The views expounded by the courts in such decisions are well set out in Sinks v. Reese, where the Supreme Court of Ohio invalidated a proviso in a State consent statute reserving

a right to vote to residents of a veterans' asylum because of a State constitutional provision which did not permit extension of voting rights to persons not resident in the State. The Ohio court said (19 Ohio St. 306, 316 (1889)):

> * * * By becoming a resident inmate of the asylum, a person though up to that time he may have been a citizen and resident of Ohio, ceases to be such; he is relived from any obligation to contribute to her revenues, and is subject to none of the burdens which she imposes upon her citizens. He becomes subject to the exclusive jurisdiction of another power, as foreign to Ohio as is the State of Indiana or Kentucky or the District of Columbia. The constitution of Ohio requires that electors shall be residents of the State; but under the provisions of the Constitution of the United States, and by the consent and act of cession of the legislature of this State, the grounds and buildings of this asylum have been detached and set off from the State of Ohio, and ceded to another government, and placed under its exclusive jurisdiction for an indefinite period. We are unanimously of the opinion that such is the law, and with it we have no quarrel; for there is something in itself unreasonable that men should be permitted to participate in the government of

a community, and in the imposition of charges upon it, in whose interests they have no stake, and from whose burdens and obligations they are exempt.

Arledge v. Mabry, 52 N.M. 303, 197 P.2d 884 (1948), (voting privilege denied) and Schwartz v. O'Hara Township School Dist., 375 Pa. 440, 100 A.2d 621 (1953), (public school education privilege denied) are two recent cases in which this doctrine was applied.

Contrary view of extraterritoriality.--The view that residents of areas of exclusive legislative jurisdiction are not residents or citizens of the State in which the area is situated has

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not gone unquestioned. In Woodfin v. Phoebus, 30 Fed. 289 (C.C.E.D.Va., 1887), the court said (pp. 296-297):

> Although I have thought it unnecessary to pass upon the question whether Mrs. Phoebus and her children, defendants in this suit, by residing at Fortress Monroe, were by that fact alone non-residents and not citizens of Virginia, yet I may as well say, Obiter, that I do not think that such is the result of that residence. Fortress Monroe is not a part of Virginia as to the right of the state to exercise any of the powers of government within its limits. It is dehors the state as to any such exercise of the rights of sovereignty, that inhabitants there, especially the widow and minor children of a deceased person, thereby lose their political character, and cease to be citizens of the state. Geographically, Fortress Monroe is just as much a part of Virginia as the grounds around the capital of the state at Richmond,--"Fortress Monroe, Virginia," is its postal designation. Can it be contended that, because a person who may have his domicile in the custom-house at Richmond, or in that at Norfolk, or at Alexandria, or in the federal space at Yorktown, on which the monument there is built, or in that in Westmoreland county, in which the stone in honor of Martha Washington is erected, loses by that fact his character of a citizen of Virginia? Would it not be a singular anomaly if such a residence within a federal jurisdiction should exempt such a person from suit in a federal court. Can it be supposed that the authors of the constitution of the United States, in using the term "citizens of different states." meant to provide that the residents of such small portions of states as should be acquired by the national government for special pur-

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> posses, should lose their geographical and political identity with the people of the states embracing these places, and be exempt by the fact of residence on federal territory from suit in a federal court? I doubt if it would ever be held by the supreme court of the United States that the cession of jurisdiction over places in states for national used, such as the constitution contemplates, necessarily disenfranchised the residents of them, and left them without any political status at all. In the western territories of the United States,

governments are provided on the very ground that no state authority exists. In the District of Columbia, a government is provided under the control of congress. In the territories and the federal district, a condition of things exists which excludes the theory of any reservation of rights to the inhabitants of the body politic to which they had before belonged. I see no reason for insisting that persons are cut off from membership of the political family to which they had belonged by the cession to the United States of sovereign jurisdiction and power over forts and arsenals in which they had resided.

I suggest these thoughts in the form of quaere, and make what is said no part of the adjudication of the case. But see U.S. v. Cornell, 2 Mason, 60; Com. v. Clary, 8 Mass. 72; Sinks v. Reese, 19 Ohio St. 306; Foley v. Shriver, 10 Va.Law J. 419.

In Howard v. Commissioners, 344 U.S. 624 (1953), the Supreme Court had occasion to pass directly on the question of extraterritoriality of Federal enclaves, although liability of the occupants of a Federal enclave to taxation by a municipality under the Buck Act, rather than their eligibility to privileges as residents of the State, was the ultimate issue for the court's decision. The court said (p. 626):

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The appellants first contend that the City could not annex this federal area because it had ceased to be a part of Kentucky when the United States assumed exclusive jurisdiction over it. With this we do not agree. When the United Stated, with the consent of Kentucky, acquired the property upon which the Ordnance Plant is located, the property did not cease to be a part of Kentucky. The geographical structure of Kentucky remained the same. In rearranging the structural divisions of the Commonwealth, in accordance with state law, the area became a part of the City of Louisville, just as it remained a part of the County of jefferson and the Commonwealth of Kentucky. A state may conform its municipal structures to its own plan, so long as the state does not interfere with the exercise of jurisdiction within the federal area by the United States. Kentucky's consent to this acquisition gave the United States power to exercise exclusive jurisdiction within the area. A change of municipal boundaries did not interfere in the least with the jurisdiction of the United States within the area or with its use or disposition of the property. The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed.

The decision in the Howard case would seen to make untenable the premise of extraterritoriality upon which most of the deci-

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sions denying civil political rights and privileges are squarely based.

Theory of incompatibility.--In some instances, usually where the courts have not been entirely explicit on this matter in the language of their opinions, it can be on construed that decisions denying civil or political rights to residents of exclusive Federal jurisdiction areas are based simply on a theory that exercise of such rights by the residents would be inconsistent with federal exercise of "exclusive legislation" under the Constitution.

Weaknesses in incompatibility theory.--Historical evidence supports the contrary view, namely, that article I, section 8, clause 17, of the Constitution, does not foreclose the States from extending civil rights to inhabitants of Federal areas. As was indicated in chapter II, James Madison, in response to Patrick Henry's contention that the inhabitants of areas of exclusive Federal legislative jurisdiction would be without civil rights, stated that the States, at the time they ceded jurisdiction, could safeguard these rights by making "what stipulations they please" in their cessions to the Federal Government. If a stipulation by a State safeguarding such rights in not incompatible with "exclusive legislation," it might well be argued that unilateral extension of the rights by a State after the transfer of jurisdiction is entirely permissible; for it would seem that the possession of State rights by the residents, rather than the timing of the securing of such rights, would create any incompatibility. And objections of incompatibility with exclusive Federal jurisdiction of State extension of such rights as voting to residents of Federal enclaves would seem answerable with the words of the Supreme Court in its opinion in the Howard case, supra: "The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to

which we must give heed." What is more, truly exclusive Federal jurisdiction, as it was known in the time of the basic decisions denying civil and political rights and privileges to residents of Federal enclaves, no longer exists except as to the District of Columbia.

Former exclusivity of Federal jurisdiction.--The basic decisions and most other decisions denying civil or political rights and privileges to residents of Federal enclaves were rendered with respect to areas as to which the States could exercise no authority other than the right to serve process, and in many of these reference is made in the opinions of the court to the fact that residents of the areas were not obliged to comply with any State law or to pay any State taxes. It will be recalled that until comparatively recent times it was thought that there could not be transferred to the Federal Government a lesser measure of jurisdiction than exclusive.

Present lack of Federal exclusivity.--That period is past, however, and numerous States now are reserving partial jurisdiction. Moreover, beginning in June 1936, by a number of statutes the Federal Government has retroceded to the States (and their political subdivisions) jurisdiction variously to tax and take other actions

with respect to persons and transactions in areas under Federal legislative jurisdiction. Consequently, and notwithstanding the definition given the term "exclusive legislative jurisdiction" for the purposes of this work, there would seem at present to be no area (except the District of Columbia) in which the jurisdiction of the Federal Government is truly exclusive, and residents of such areas are liable to numerous State and local tax laws and at least some other State laws.

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Rejection of past concepts.--In Arapajolu v. McMenamin, discussed above, the Supreme Court of the State of California, taking cognizance of factors outlined above, held residents of areas over which the Federal Government had legislative jurisdiction to be residents of the State. In determining them entitled to vote as such residents, the court stated and disposed of a final argument as follows (249 P.2d 318, 323):

> Respondents argue in their brief: "The states could have reserved the right to vote at the time of the original cession where such right did not conflict with federal use of the property * * * but did not do so." We cannot follow the force of this argument. The State of California did not relinquish to the United States the right of citizens resident on federal lands to vote nor did the United States acquire those rights. The right to vote is personal to the citizen and depends on whether he has net the qualifications of section 1, Art. II of our Constitution. If the State retains jurisdiction over a federal area sufficient to justify a holding that it remains a part of the State of California a resident therein is a resident of the State and entitled to vote by virtue of the Constitutionally granted right. No express reservation of such rights is necessary, nor cold any attempted express cession of such rights to the United States be effective.

Interpretations of Federal grants of power as retrocession.--In asserting the existence at the present time of "jurisdiction" in the State of California over what were formerly "exclusive"

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Federal jurisdiction lands, the court said in the Arapajolu case (249 P.2d 322):

> * * * The power to collect all such taxes depends upon the existence of State jurisdiction over such federal lands and therefore may not be exercised in territory over which the United States has exclusive jurisdiction. Standard Oil Co. v. California, 291 U.S. 242. 54 S.Ct. 381, 78 L.Ed. 775. In recognition of this fact the Congress has made these recessions to the States in terms of jurisdiction, e.g. 4 U.S.C.A. Secs. 105 and 106: "and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State * * *"; 26 U.S.C.A. Sec. 1606 (d): "and any State shall have full jurisdiction and power to enforce the provisions of such law * * * as though such place

were not owned, held, or possessed by the United States."

In Kiker v. Philadelphia, 346 Pa. 624, 31 A.2d 289 (1943), cert. den., 320 U.S. 741, previously discussed at page 203, above, the Supreme Court of Pennsylvania referred to the Buck Act as a "recession of jurisdiction" to the State when upholding applicability thereunder of a municipal tax to the income of a Federal employee earned in a Federal enclave. A holding to the same effect was had in Davis v. Howard, 306 Ky. 149, 206 S.W.2d 467 (1947).

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Interpretation of such statutes as Federal retrocession of partial jurisdiction to the States apparently is essential, since States seemingly would require "jurisdiction" to apply taxes generally, and the tax and other provisions of their workmen's and unemployment compensation acts, at least as to persons over whom they have no authority except as may arise from the presence of such persons on an "exclusive" Federal jurisdiction area. Thus, in Atkinson v. State Tax Commission, 303 U.S. 20 (1938), the Supreme Court held (p. 25) that the enforcement by a State of its workmen's compensation law in a Federal area was "incompatible with the existence of exclusive legislative authority in the United States." And in S.R.A., Inc. v. Minnesota, 327 U.S. 558 (1946), it stated that the levy by Minnesota of a tax evidenced its acceptance of a retrocession of jurisdiction.

Summary of contradictory theories on rights of residents.-- Arledge v. Mabry and Schwartz v. O'Hare Township School District, it may be said, represent cases maintaining strictly the principle of star decisis on questions of exercise of State rights by residents of Federal areas. They uphold the doctrine of extraterritoriality of Federal enclaves and the theory of incompatibility between exercise of State rights by residents of Federal areas and Federal possession of jurisdiction over such areas. Under the view taken in these cases the only modifications which need to be made for modernizing the very early decisions upon which they are fundamentally based are those which patently are required for enforcing States laws the extension of which is authorized to Federal areas by Federal laws; in other words, no consequences whatever flow from a Federal retrocession of partial jurisdiction to a State other than that

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the State may exercise the retroceded powers. Under this view, it would seem, residents of areas over which the Federal Government has any jurisdiction can enjoy State rights and privileges, unless reserved for the residents in the transfer of jurisdiction, only if Congress expressly retrocedes jurisdiction over such rights and privileges to the States. It may also be said, on the other hand, that Arapajolu v. McMenamin, and to some extent Adams v. Londeree, the several other cases cited in this chapter upholding the right of persons to privileges under State laws, and cases upholding the right of States to exercise governmental authority in areas as to which the Federal Government has jurisdiction, indicate at least a trend away from the old cases and to abandonment of the doctrine of extraterritoriality and the theory of incompatibility. And this

trend in the judicial recognition of the existence of State civil and political rights in residents of Federal enclaves would seem to be given considerable authority first: by the decision of the Supreme Court in Howard v. Commissioners, supra, rejecting the extraterritoriality doctrine, although, like the similar decision of the Supreme Court of Pennsylvania in Kiker v. Philadelphia, the Howard decision immediately related to a State's rights over individuals in Federal enclaves rather than to individuals' rights to privileges under State law, and second: by present exercise by States of considerable tax and other jurisdiction over Federal enclaves and residents thereof, opening the way to questions of State citizenship of persons domiciled on such areas, nd of abridgment of their privileges, under the 14th Amendment. Residents of an exclusive Federal jurisdiction area, it has been held with respect to the District of Columbia, may not be deprived of the constitutional guarantees respecting life, liberty, and property.

CHAPTER IX

AREAS NOT UNDER LEGISLATIVE JURISDICTION

FEDERAL OPERATIONS FREE FROM INTERFERENCE: In general.--In M'Culloch v. Maryland, 4 Wheat. 316 (1819), Chief Justice Marshall enunciated for the Supreme Court what has become a basic principle of the constitutional law of the United States (pp. 405-406):

> If any one proposition could command the universal assent of mankind, we might expect it would be this--that the government of the Union, though limited in its powers, is supreme within necessarily form its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not lift to mere reason: the people have, in express

> terms, decided it, by saying, "this constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land," and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it.
>
> The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, "any thing in the constitution or laws of any State to the contrary notwithstanding."

The "supremacy clause," from which Justice Marshall quoted and on which the announced constitutional principle was based, applies not only to those powers which have been expressly delegated to the United States, but also to powers which may be implied therefrom. These implied powers were, in that same opinion, defined by Chief Justice Marshall as follows (p. 421):

> We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution,and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

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This doctrine of implied powers was based on the "necessary and proper clause."

Real property.--The freedom of Federal operations from State interference extends, by every rule of logic, to such operations involving use of Federal real property. So, in Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885), the Supreme Court said (p. 539):

> Where, therefore, lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But, when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits.

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The case of Ohio v. Thomas, 173 U.S. 276 (1899), aptly demonstrates the inconsequence, with respect to freedom of Federal functions from State interference, of the jurisdictional status of lands upon which such functions are being performed. In holding that a State could not enforce against Federal employees, charged with the responsibility of administering a soldiers' home, a State statute requiring the posting of notices wherever oleomargarine is served, the court said (p. 283):

> Whatever jurisdiction the State may have over the place or ground where the institution is located, it can have none to interfere with the provision made by Congress for furnishing food to the inmates of the home, nor has it power to prohibit or regulate the furnishing of any article of food which is approved by the officers of the home, by the board of managers and by Congress. Under such circumstances the police power of the State has no application.
>
> We mean by this statement to say that Federal officers who are discharging their duties in a State and who are engaged as this appellee was engaged in superintending the internal government and management of a Federal institution, under the lawful direction of its board of managers and with the approval of Congress, are not subject to the jurisdiction of the State in regard to those very matters of administration which are thus approved by Federal authority.

In asserting that this officer under such circumstances is exempt from the state law, the United States are not thereby claiming jurisdiction over this particular piece

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of land, in opposition to the language of the act of Congress ceding back the jurisdiction the United States received from the State. The government is but claiming that its own officers, when discharging duties under Federal authority pursuant to ad by virtue of valid Federal laws, are not subject to arrest or other liability under the laws of the State in which their duties are performed.

In addition to these sources of constitutional power of the Federal Government, which have consequent limitations on State authority, article IV, section 3, clause 2, of the Constitution, vests in Congress certain authority with respect to any federally owned lands which it alone may exercise without interference from any source. As was stated in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), (pp. 403-405):

The first position taken by the defendants is that their claims must be tested by the laws of the State in which the lands are situate rather than by the legislation of Congress, and in support of this position they say that lands of the United States within a State, when not used or needed for a fort or other governmental purposes of the United States, are subject to the jurisdiction, powers and laws of the State in the same way and

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to the same extent as are similar lands of others. To this we cannot assent. Not only does the Constitution (Art. IV, Sec. 3, cl. 2) commit to Congress the power "to dispose of the make all needful rules and regulations respecting" the lands of the United States, but the settled course of legislation, congressional and state, and repeated decisions of this court have gone upon the theory that the power of Congress is exclusive and that only through its exercise in some form can rights in lands belonging to the United States be acquired. True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them. * * *

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From the earliest times Congress by its legislation, applicable

> alike in the States and Territories, has regulated in many particulars the use by others of the lands of the United States, has prohibited and made punishable various acts calculated to be injurious to them or to prevent their use in the way intended, and has provided for and controlled the acquisition of right of way over them for highways, railroads, canals, ditches, telegraph lines and the like. * * * And so we are of opinion that the inclusion within a State of lands of the United States does not take from Congress the power to control their occupancy and use, to protect them from trespass and to prescribe the conditions upon which others may obtain rights in them, even though this may involve the exercise in some measure of what commonly is known as the police power.* * *

That the power of Congress in these matters transcends any State laws is demonstrated by Hunt v. United States, 278 U.S. 96 (1928), wherein it was held that a State could not enforce its game laws against Federal employees who, upon

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direction of the Secretary of Agriculture, destroyed a number of wild deer in a national forest (which was not under the legislative jurisdiction of the United States), because the deer, by overbrowsing upon and killing young trees, hushes, and forage plants, were causing great damage to the land. The court said (p. 100):

> * * * That this [destruction of deer] was necessary to protect the lands of the United States within the reserves from serious injury is made clear by the evidence. The direction given by the Secretary of Agriculture was within the authority conferred upon him by act of Congress. And the power of the United States to thus protect its lands and property does not admit of doubt, Camfield v. United States, 167 U.S. 518, 525-526; Utah Power & Light Co. v. United States, 243 U.S. 389, 404; McKelvey v. United States, 260 U.S. 353, 359; United States v. Alford, 274 U.S. 264, the game laws or any other statute of the state to the contrary notwithstanding.

This power of Congress extends to preventing use of lands adjoining Federal lands in a manner such as to interfere with use of the Federal lands. This particular issue came before the Supreme Court in Camfield v. United States, 167 U.S. 518 (1897), where the court considered the applicability of an act of Congress, which prohibited the fencing of public lands, to fencing of lands adjoining public lands in a manner as to make the latter property inaccessible. The court said (pp. 524-526):

> While the lands in question are all within the State of Colorado, the Government has, with respect to its

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> own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his farming property. It may sell or withhold them from sale. It

> may grant them in aid of railways or other public enterprises. It may open them to preemption or homestead settlement; but it would be recreant to its duties as trustee for the people of the United States to permit any individual or private corporation to monopolize them for private gain, and thereby practically drive intending settlers from the market. It needs no argument to show that the building of fences upon public lands with intent to enclose them for private use would be a mere trespass, and that such fences might be abated by the officers of the Government or by the ordinary processes of courts of justice. To this extent no legislation was necessary to vindicate the rights of the Government as a landed proprietor.
>
> But the evil of permitting persons, who owned or controlled the alternate sections, to enclose the entire tract, and thus to exclude or frighten off intending settlers, finally became so great that Congress passed the act of February 25, 1885, forbidding all enclosures of public lands, it was manifestly unnecessary, since the Government as an ordinary proprietor would have the right to prosecute for such a trespass. It is only by whatever means, that the act becomes of any avail. * * * The general Government doubtless has a power over its own property analogous to the power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular

> case. If it be found to be necessary for the protection of the public, or of intending settlers, to forbid all enclosures of public lands, the Government may do so, thought the alternate sections of private lands are thereby rendered less available for pasturage. The inconvenience, or even damage, to the individual proprietor does not authorize an act which is in its nature a purpresture of government lands. While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a State, which it would have within a Territory, we do not think the admission of a Territory as a State deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of state legislation.

In McKelvey v. United States, 260 U.S. 353 (1922), the Supreme Court, in sustaining another provision of the same Federal statute, prohibiting restraints upon persons entering public lands, said (p. 359):

> It is firmly settled that Congress may prescribe rules respecting the use of the public lands. It may sanction some uses and prohibit others, and may forbid interference with such as are sanctioned. Camfied v. United States, 167 U.S. 518, 525; United States v. Grimaud, 220 U.S. 506, 521; Light v. United States, 220 U.S. 523, 536; Utah Power & Light Co. v. United States, 243 U.S. 389, 404-405. The provision now before us is but an exertion of that power. It does no more than to sanction free passage over the public lands and to make the obstruction

thereof by unlawful means a punishable offense.

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The opinions in M'Culloch v. Maryland, Fort Leavenworth R.R. v. Lowe, Ohio v. Thomas, Hunt v. United States, Utah Power & Light Co. v. United States, Camfield v. United States, and McKelvey v. United States clearly demonstrate that the authority of the Federal Government over its lands within the State is not limited to that derived from legislative jurisdiction over such lads of the character which has been the subject of the preceding chapters; there have been delegated to the Federal Government by the Constitution vast powers which may be exercised with respect to such lands. These powers not only permit the Government to exercise affirmative authority upon and with respect to such lands, but they also serve to prevent--and to authorize Federal legislation to prevent--interference by the States and by private persons with the Federal Government's acquisition, ownership, use, and disposition of lands for Federal purposes and with Federal activities which may be conducted on such lands.

FREEDOM OF USE OF REAL PROPERTY ILLUSTRATED: Taxation.--The freedom of the Federal Government's use of its real property from State interference, through the operation of constitutional provisions other than article I, section 8, clause 17, is illustrated by the freedom of such property from State, and State-authorized (local), taxation. Since the history of the development of such freedom from taxation reflects in considerable measure the development of freedom of Federal property, and Federal operations on such property, from State interference generally, such history is deserving of detailed consideration.

Prior to 1886, it was an open question whether federally owned real estate was in all instances exempt from State taxation. Thus, in Commonwealth v. Young, 1 Journ. Juris. (Hall's,, Phila.) 47 (Pa., 1818), it was suggested that federally owned land over which legislative jurisdiction had not been acquired was subject to all State laws, including revenue laws. In United States v. Railroad Bridge Co., 27 Fed. Cas. 686, No. 16,114 (C.C.N.D. Ill., 1855), it was suggested by Justice

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McLean that the tax exemption of federally owned lands was dependent upon compacts between the United States and the State whereby the State has surrendered the right to tax; if not subject to such a compact, Justice McLean suggested, Federal lands could be subjected to State taxation. He added (p. 692):

> * * * In many instances the stats have taxed the lands on which our custom houses and other public buildings have buildings have been constructed, and such taxes have been paid by the federal government. This applies only to the lands owned by the Government as a proprietor, the jurisdiction never having been ceded by the state. The proprietorship of land in a state by the general government, cannot, it would seem, enlarge its sovereignty of restrict the sovereignty or restrict the sovereignty of the state.

Somewhat similar views were implied in two early California cases (subsequently superseded by contrary views, as indicated infra), People v. Morrison, 22 Cal. 73 (1863); People v. Shearer, 30 Cal. 645 (1866). In United States v. Weise, 28 Fed. Cas. 518, No. 16,659 (C.C.E.D.Pa., 1851), the court said (p. 518) that the authority of the State to tax property of the Federal Government "has been the subject of much discussion of late. It has been twice argued before the supreme court of the United States, but remains undecided." The court did not rule on the issue in that case, but held that such a tax could not in any event be enforced by levy, seizure, and sale of property.

In its opinion, the court did not identify the cases in which the tax issue had been twice argued before the supreme court of the United States", but left undecided. It presumably had reference, however, to the unreported cases of United States v. Portland (1849) and Roach v. Philadelphia County (1849). According to an account given of the latter case in 2 American Law Journal (N.S.) 444 (1849-1850):

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> * * * A writ of Error had been taken to the Supreme Court of Pennsylvania. By the decision of that Court the lot on which is erected the Mint of the United States was held liable to taxation for county purposes under State laws. The State of Pennsylvania had never relinquished her right of taxation, nor had she given her consent tot he purchase of the ground by the United States.--The Supreme Court of the United States affirmed the judgment of the State Court, thereby sustaining the right of the State to impose taxes upon the property, notwithstanding that it belonged to the United States.

According to a report of the same case, as recited by the Supreme Court in Van Brocklin v. Tennessee, 117 U.S. 151, 176 (1886), the treasurer of the mint had sought to recover State, county and city taxes which had been levied and paid both upon the building and land used by the mint of the United States, and the decision of the Pennsylvania Supreme Court upholding the validity of the taxes was sustained by an equal division of the United States Supreme Court. The decision of the Pennsylvania court, like that of the United States Supreme Court in this case, has not been found in any of the reports.

In the opinion in the Van Brocklin case, the Supreme Court gave the following account (at p. 175) of the case of United States v. Portland:

> The first of those cases was United States v. Portland, which, as agreed in the statement of facts upon which it was submitted to the decision of the Circuit Court

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> of the United States for the District of Maine, was an action brought by the United States against the City of Portland to recover back the amount of taxes assessed for county and city purposes, in conformity with the statutes of Maine, upon the land, wharf and building owned by the United States in that

city. The building had been erected by the United States in that purpose, and no other. The land, building and wharf were within the legislative jurisdiction of the State of Maine, and had always been so, not having been purchased by the United States with the consent of the legislature of the State. The case was heard in the Circuit Court at May term 1845, and was brought to this court upon a certificate of division of opinion between Mr. Justice Story and Judge Ware on several questions of law, the principal one of which was, whether the building, land and wharf, so owned and occupied by the United States, were legally liable to taxation; and this court, being equally divided in opinion on those questions, remanded the case to the Circuit Court for further proceedings. The action therefore failed. The legislature of Maine having meanwhile, by the statute of 1846, ch. 159, Sec. 5, provided that the property of the United States should be exempted from taxation, the question has never been renewed.

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Such acquisition may be with or without the consent of the State in which the property is situated. Moreover, the Supreme Court emphasized, the laws of the Untied States are supreme, and the States have no power, by taxation or otherwise, to retard, impede, burden or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers of the Federal Government.

Taxation, the court stated, relying on M'Culloch v. Maryland, 4 Wheat. 316 (1819), is such ann interference. Moreover, the court made clear, a distinction cannot be made on the basis of the uses to which the real property of the Federal Government may be devoted (pp. 158-159):

> The United States do not and cannot hold property, as a monarch may, for private or personal purposes. All the property and revenues of the United States must be held and applied, as all taxes, duties, imposts and excises must be laid and collected, "to pay the debts and provide for the common defence and general welfare of the United States." ***

After referring to the Articles of Confederation of 1778, in which it was expressly provided that "no imposition, duties or restriction shall be laid by any State on the property of the United States," and to the fact that a similar provision was also contained in the Northwest Ordinance of 1787, the court said (pp. 159-160):

> The Constitution creating a more perfect union, and increasing

> the powers of the national government, expressly authorized the Congress of the United States "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States;" "to exercise exclusive legislation over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;" and "to dis-

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> pose of and make all needful rules and regulations respecting the territory or other property of the United States"; and declared, "This Constitution and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." No further provision was necessary to secure the lands or other property of the United States from taxation by the States.

The court concluded its opinion as follows (pp. 179-180):

> * * * To allow land, lawfully held by the United States as security for the payment of taxes assessed by and due to them, to be assessed and sold for State taxes, would tend to create a conflict between the officers of the two governments, to deprive the United States of a title lawfully acquired under express acts of Congress, and to defeat the exercise of the constitutional power to lay and collect taxes, to pay the debts and provide for the common defence and general welfare of the United States.

While citing article IV, section 3, clause 2, as one of the bases for its conclusion, the Supreme Court in the Van Brocklin opinion did not rely solely on that provision, nor did it spell out its reasons for concluding that this clause prevented State and local taxation of real estate of the United States. Four years later, the Supreme Court had occasion to give more detailed consideration to this question in Wisconsin Central R.R. v. Price County, 133 U.S. 496 (1890). In that case the court said (p. 504):

> It is familiar law that a State has no power to tax the property of the United States within its limits. This exemption of their property from state taxation--and by state taxation we mean any taxation by authority of the State, whether it be strictly for state purposes

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> or for mere local and special objects--is founded upon that principle which inheres in every independent government, that it must be free from any such interference of another government as may tend to destroy its powers or impair their efficiency. If the property of the United States could be subjected to taxation by the State, the object and extent of the taxation would be subject to the State's discretion. It might extend to buildings

> and other property essential to the discharge of the ordinary business of the national government, and in the enforcement of the tax those buildings might be taken from the possession and use of the United States. The Constitution vests in Congress the power to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." And this implies an exclusion of all other authority over the property which could interfere with his right or obstruct its exercise. * * * [Emphasis added.]

The opinions of the Supreme Court in the Van Brocklin and Wisconsin Central R.R. cases establish an inflexible rule, with no exceptions, that property of the Federal Government may not, absent the express consent of the Government, be taxes by a State or subdivision thereof. All such property is held in a governmental capacity, and its taxation by a State or local subdivision, the Supreme Court has stated, would constitute an unconstitutional interference with Federal functions; in addition, since taxation carries with it the right to levy execution on the property in order to enforce payment of the tax on it, the taxation of such property by a State is prohibited by article IV, section 3, clause 2, of the Constitution, which vests solely in the Congress the authority to dispose of property of the United States.

State activities are exempt from Federal taxation only to the extent that they represent an exercise of governmental powers rather than engaging in business of a private nature. Ohio v. Helvering, 292 U.S. 360, 368 (1934); South Carolina v. United States, 199 U.S. 437, 458 (1905). Ohio taxing authorities thought that this rule applied conversely to allow them to tax a Federal housing project and the Ohio Supreme Court denied tax exemption. The United States Supreme Court rejected this contention in two curt sentences in Cleveland v. United States, 323 U.S. 329, 333 (1945), as follows: "And Congress may exempt property owned by the United States or its instrumentality form state taxation in furtherance of the purposes of the federal legislation. This is settled by such an array of authority that citation would seem unnecessary." Thereafter the Ohio Supreme Court rejected another attempt of the taxing authorities to apply the governmental versus proprietary function distinction to the United States, holding that so long as the land is owned by the United States it is tax exempt. United States (Form Credit administration) v. Board of Tax Appeals, et al., 145 Ohio St. 257, 61 N.E. 2d 481 (1945). However, Federal ownership does not prohibit taxation of private interests in the same parcel of real property. S.R.A., Inc. v. Minnesota, 327 U.S. 558 (1946).

While federally owned property is constitutionally exempt from State and local taxation, the Congress may, of course, waive such exemption. Both at the present time and in years past Congress has authorized the payment of State and local taxes on certain federally owned real property. Thus, at the present time, approximately three million dollars per year are paid pursuant to such authorizations in addition to the so-called payments in lieu of taxes, which aggregate approximately 14 million dollars more. Such authorizations by the

Congress are not, of course, a recent innovation. Thus, specific appropriation of funds for payment of the tax on the mint of the United States in Philadelphia, involved in Roach v. Philadelphia County, supra, was made by the Congress. And in 4 Stat. 673, 675 (act of May 14, 1834), is to be found another appropriation made expressly for the purpose of paying just such taxes.

Special assessments.--Federally owned property is constitutionally exempt not only from a State's and local subdivision's general real property taxes, but it is also immune from special assessments which are levied against property owners for improvements. See Wisconsin Central R.R. v. United States, 290 U.S. 89 (1933); United States v. Anderson Cottonwood Irr. Dist., 19 F.Supp. 740 (N.D.Cal., 1937). Such immu-

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nity extends not only to the Federal Government but also to its successors in interest, insofar as the special assessments relate to any improvements which were made while the Federal Government owned the property. This latter issue was so decided in Lee v. Osceola & Little River Road Improvement District, 268 U.S. 643 (1925), and in the course of its opinion the Supreme Court said (p. 645):

> It was settled many years ago that the property of the United States is exempt by the Constitution from taxation under the authority of a State so long as title remains in the United States. Van Brocklin v. State of Tennessee, 117 U.S. 151, 180. This is conceded. It is urged, however, that this rule has no application after the title has passed from the United States, and that it may then be taxed for any legitimate purposes. While this is true in reference to general taxes assessed after the United States has parted with its title, we think it clear that it is not the case where the tax is sought to be imposed for benefits accruing tot he property from improvements made while it was still owned by the United States. In the Van Brocklin Case, supra, p. 168, it was said that the United States has the exclusive right to control and dispose of its public lands, and that "no State can interfere with this right, or embarrass its exercise." Obviously, however, the United States will be hindered in the disposal of lands upon which local improvements have been made, if taxes may thereafter be assessed against the purchasers for the benefits resulting from such improvements. Such a liability for the future assessments of taxes would create a serous incumbrance upon the lands, and its subsequent

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> enforcement would accomplish indirectly the collection of a tax against the United States which could not be directly imposed. * * *

Condemnation of Federal land.--Closely related to the subject of State taxation of Federal land is that of State condemnation of such land. Prior to the decision of the Supreme Court in Van Brocklin v. Tennessee, 117 U.S. 151 (1886), in which was established the

proposition that the Federal Government does no, and cannot, hold property in a proprietary capacity, it was held in a number of cases that the State's power of eminent domain extended to land of the Federal Government not used or needed for a governmental purpose.

The decision in the Van Brocklin case, in its holding that the Federal Government owns all of its property in a governmental capacity, rendered untenable the underlying principles upon which these cases sustaining the State's power of eminent domain rested, and in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), the United States Supreme Court disposed of the issue squarely by stating (pp. 403-404):

> The fact position taken by the defendants is that their claims must be tested by the laws of the State in which the lands are situate rather than by the legislation of Congress, and in support of this position they say that the lands of the United States within a State, when not used or needed for a fort or other governmental purpose of the United States are subject to the jurisdiction, powers and laws of the State in the same way and to the same extent as are similar lands of others.

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> To this we cannot assent. Not only does the Constitution (Art. IV, Sec. 3, cl. 2) commit to Congress the power "to dispose of and make all needful rules and regulations respecting" the lands of the United States, but the settled course of legislation, congressional and state, and repeated decisions of this court have gone upon the theory that the power of Congress is exclusive and that only through its exercise in some form can rights in lands belonging to the United States be acquired. * * *

And, as to the issue of the State's exercise of its power of eminent domain with respect to federally owned land, the court concluded (p. 405):

> It results that laws, including those relating to the exercise of the power of eminent domain, have no bearing upon a controversy such as is here presented [viz., the right to use and occupy federally owned land], same as they may have been adopted or made applicable by Congress.

The same result would because of the Federal Government's sovereign immunity from suit. A proceeding to condemn land, in which the United States has an interest, is a suit against the United Stats which may be brought only by the consent of Congress. Minnesota v. United States, 305 U.S. 382, 386-387 (1939).

FEDERAL ACQUISITION AND DISPOSITION OF REAL PROPERTY: Acquisition.--While the acquiescence of a State is essential to acquisition by the Federal Government of legislative jurisdiction over an area within such State, it is not essential to the acquisition by the Federal Government of real property within the States. The Federal Government may obtain such

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real property by gift, purchase, or condemnation. See Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885); Kohl v. United States, 91 U.S. 367 (1876). It may also obtain property of the State by exercise of its power of eminent domain, even though such property is used by the State for governmental purposes. United States v. Wayne County, 53 C.Cls. 417 (1918), aff'd., 252 U.S. 574 (1920); United States v. Carmack, 329 U.S. 230 (1946); Oklahoma v. Atkinson Co., 313 U.S. 508 (1941); United States v. Montana, 134 F.2d 194 (C.A. 9, 1943) and see also United States v. Clarksville, 224 F.2d 712 (C.A. 4, 1955).

Disposition.--By reason of article IV, section 3, clause 2, of the Constitution, Congress alone has the ultimate authority to determine under what terms and conditions property of the Federal Government may or shall be sold. In Gibson v. Chouteau, 13 Wall. 92 (1872), which involved a complex issue of a claim of title under State law as against title claimed through a patent from the Federal Government, the Supreme Court said (pp. 99-100):

> With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise; and to prevent the possibility of any attempted interference with it, a provision has been usually inserted in the compacts by which new States have been admitted into the Union, that such interference with the primary disposal of the soil of the United States shall never be made. Such provision was inserted in the act admitting Missouri,

> and it is embodied in the present Constitution, with the further clause that the legislature shall also not interfere "with any regulation that Congress may find necessary for securing the title in such soil to the bona fide purchasers."
>
> The same principle which forbids and State legislation interfering with power of Congress to dispose of the public property of the United States, also forbids any legislation depriving the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition. The consummation of the title is not a matter which the grantees can control, but one which rests entirely with the government. With the legal title, when transferred, goes the right to possess and enjoy the land, and it would amount to a denial of the power of disposal in Congress if these benefits, which should follow upon the acquisition of that title, could be forfeited because they were not asserted before that title was issued.

Similarly, in Bagnell v. Broderick, 13 Pet. 426 (1839_), it was held that the Congress has "the sole power to declare the dignity and effect of titles emanating from the United States" (p. 450), and in

Wilcox v. Jackson, 13 Pet. 498 (1839), it was held that the question of whether title to land which once was the property of the Federal Government had passed to its assignee is to be resolved by the laws of the United States. In Irvine v. Marshall, et al., 20 How. 558 (1858), it was said (p. 563):

> * * * The fallacy of the conclusion attempted * * *, consists in the supposition, that the control of the United States over property admitted to be their own, is dependent upon locality, as to the point within the limits of a State or Territory within which that prop-

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> erty may be situated. But as the control, enjoyment, or disposal of that property, must be exclusively in the United States, anywhere and everywhere within their own limits, and within the powers delegated by the Constitution, no State, and much less can a Territory, (yet remaining under the authority of the Federal Government,) interfere with the regular, the just, and necessary power of the latter. * * *

In the exercise of its powers of disposition, Congress may authorize the leasing of real property, as well as its sale. United States v. Gratiot, 14 Pet. 526 (1840). In disposing of property, Congress may also provide that it shall not become liable for the satisfaction of debts contracted prior to the issuance of a land patent. Ruddy v. Rossi, 248 U.S. 104 (1918). Congress may also provide that it shall not become liable for the satisfaction of debts contracted prior to the issuance of a land patent. Ruddy v. Rossi, 248 U.S. 104 (1918). Congress may also restrict the disposition of personal property developed by a grantee on property acquired from the United States. United States v. San Francisco, 310 U.S. 16 (1940). Under its general powers of disposition, Congress may condition the use of real property of the United States by requiring the user to transmit over its lines electric power owned by the Federal Government. Federal Power Commission v. Idaho Power Co., 344 U.S. 17 (1952).

In Federal Power Commission v. Oregon, 349 U.S. 435 (1955), which basically involved interpretation of Federal statutes, it was held that a State is without authority to require a person to obtain from the State permission to construct a privately owned dam on property of the United States where such construction was instituted with the permission of the United States; the granting of such permission by the United States is an exercise of the power of disposition with which a State may not interfere. The court said (pp. 441-443):

> On its face, the Federal Power Act applies to this license as specifically as it did to the license in the First Iowa case [First Iowa Coop. v. Federal Power Commission, 328 U.S. 152]. There the jurisdiction of the Commission turned almost entirely upon the naviga-

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> bility of the waters of the United States to which the license

> applied. Here the jurisdiction turns upon the ownership or control by the United States of the reserved lands on which the licensed project is to be located. The authority to issue licenses in relation to navigable waters of the United States springs from the Commerce Clause of the Constitution. The authority to do so in relation to public lands and reservations of the United States springs from the Property Clause--"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *." Art. IV, Sec. 3.

It is clear that Congress, in the exercise of its power of disposition, may authorize actions serving to improve the marketability of the property. Thus, it may provide for the reclamation of arid lands owned by the Federal Government. United States v. Hanson, 167 Fed. 881 (C.A. 9, 1909); Kansas v. Colorado, 206 U.S. 46, 91, 92 (1907). It may also authorize the purchase of privately owned transmission lines to facilitate the sale of excess electrical energy produced by federally owned facilities. In Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936), the court stated (p. 338):

> * * * The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, it must be one adopted in the public interest as distinguished from private or personal ends, and we may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States. * * *

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PROTECTION OF PROPERTY AND OPERATIONS OF THE GOVERNMENT: Property.--It is not essential that the Federal Government have legislative jurisdiction over real property owned by it in order to provide for its protection against trespass, unauthorized use, or destruction, notwithstanding that State laws may continue effective. Legislation having these objectives has in a number of cases been sustained on the basis of the power delegated to Congress by article IV, section 3, clause 2, of the Constitution. While this clause, it is clear from Pollard v. Hagan, 3 How. 212, 223 (1845), does not grant to Congress "municipal sovereignty" over any area within a State, it constitutes a "grant of power to the United States of control over its property." Kansas v. Colorado, 206 U.S. 46, 89 (1907).

On the basis of the power vested in Congress by article IV, section 3, clause 2, of the Constitution, the United States was granted an injunction to restrain grazing of cattle on public lands without a permit. Light v. United States, 220 U.S. 523 (1911). In the course of its opinion, the court said (pp. 536-538):

> The United States can prohibit absolutely or fix the terms on which its property may be used. As it can withhold or reserve the land it can do so indefinitely, Stearns v. Minnesota, 179 U.S. 243. It is true that the "United States do not and cannot hold property as a monarch may for private or personal purposes." Van Brocklin v. Tennessee, 117 U.S. 158. But that

does not lead to the conclusion that it is without the rights incident to ownership, for the Constitution declares, Sec. 3, Art. IV, that "Congress shall have power to dis-

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pose of and make all needful rules and regulations respecting the territory or the property belonging to the United States." "The full scope of this paragraph has never been definitely settled. Primarily, at least, it is a grant of power to the United States of control over its property." Kansas v. Colorado, 206 U.S. 89.

"All the public lands of the nation are held in trust for the people of the whole country." United States v. Trinidad Coal Co., 137 U.S. 160. And it is not for the courts to say how that trust shall be administered. That is for Congress to determine. The courts cannot compel it to set aside the lands for settlement; or to suffer them to be used for agricultural or grazing purposes; nor interfere when, in the exercise of its discretion, Congress establishes a forest reserve for what it decides to be national and public purposes. In the same way and in the exercise of the same trust it may disestablish a reserve, and devote the property to some other national and public purpose. These are rights incident to proprietorship, to say nothing of the power of the United States as a sovereign over the property belonging to it. * * * * * * He [i.e., the defendant] could have obtained a permit for reasonable pasturage. He not only declined to apply for such license, but there is evidence that he threatened to resist efforts to have his cattle removed from the Reserve, and in his answer he declares that he will continue to turn out his cattle, and contends that if they go upon the Reserve the Government has no remedy at law or equity. This claim answers itself.

Similarly, in Utah Power & Light Co. v. United States, 243 U.S. 389 (1917), it was held that the United States could enjoin the occupancy and use, without its permission, of cer-

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tain of its lands forest reservations as sites for works employed in generating and distributing electric power, and to obtain compensation for such occupancy and use in the past. In United States v. Gear, 3 How. 120 (1845), it was held that the United States was entitled to an injunction to prevent unauthorized mining of lead on federally owned land. The Federal Government may also prevent the extraction of oil from public lands. See United States v. Midwest Oil Co., 236 U.S. 459 (1915). In Cotton v. United States, 11 How. 229 (1850), it was held that the United States may bring a civil action of trespass for the cutting and carrying away of timber from lands owned by the United States. The United States, as the absolute owner of the Arkansas Hot Springs, has the same power a private owner would have to exclude the public from the use of the waters. Van Lear v. Eisele, 126 Fed. 823 (C.C.E.D.Ark., 1903). Indeed, the United States has prevailed in perhaps every type of action, including special remedies variously provided by State statutes to

protect and conserve its lands, and resources and other matters located thereon.

The Federal Government has undisputed authority to provide, and has provided, criminal sanctions for various acts injurious, or having a reasonable potential of being injurious, to real property of the United States. Congress may provide for the punishment of theft of timber from lands of the United States. See United States v. Briggs, 9 How. 351 (1850); see also United States v. Ames, 24 Fed. Cas. 784, No. 14,441 (C.C.D. Mass., 1845). Federal criminal sanctions may be applied to any person who leaves a fire, without first extinguishing it, on private lands "near" inflammable grass on the

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public domain. United States v. Alford, 274 U.S. 264 (1927).

Operations.--The Federal Government has undisputed authority to protect the proper carrying out of the functions assigned to it by the Constitution, without regard to whether the functions are carried out on land owned by the United States or by others, and without regard to the jurisdictional status of the land upon which the functions are carried out. Where such functions involve Federal use of property the Congress may, regardless of the jurisdictional status of such property, make such laws with respect to the property as may be required for effective carrying out of the functions. So, the Congress has enacted statutes prohibiting, under criminal penalties, certain dissemination of information pertaining to defense installations, (*see footnote NO. 33).

Moreover, the United States, in carrying out Federal functions, whether military or civilian, may take such measures with respect to safeguarding of Federal areas (building of fences, posting of sentries or armed guards, limiting of ingress and egress, evicting of trespassers, etc.), regardless of the

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jurisdiction status of such areas, as may be necessary for the proper carrying out of the functions.

AGENCY RULES AND REGULATIONS: Beyond the acts and omissions defined as criminal by statutes, certain agencies of the Federal Government have received from the Congress authority to establish rules and regulations for the government of the land areas under their management, and penalties are provided by statute for the breach of such rules and regulations; statutory authority also exists for these agencies to confer on certain of their personnel arrest powers in excess of those ordinarily had by private citizens. However, most Federal agencies do not now have such authority. In the absence of specific authority to make rules and regulations, criminal sanctions may not attach (regardless of the jurisdictional status of the lands involved) to violations of any such rules

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or regulations issued by the officer in charge of a area, except that members of the armed forces are subject always to the Uniform Code of Military Justice. It should be noted that civilian Federal employees

in various circumstances are subject to disciplinary action and that members of the public at large may be excluded from the Federal area.

The validity of rules and regulations issued by the Secretary of Agriculture was challenged in United States v. Grimaud, 220 U.S. 506 (1911), by persons charged with driving and grazing sheep on a forest reserve without a permit. In deciding that the authority to make administrative rules was not an unconstitutional delegation of legislative power by Congress, and that the regulations of the Secretary were valid and had the force of law, the court said (p. 521):

> That "Congress cannot delegate legislative power to the President is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution." Field v. Clark, 143 U.S. 649, 692. But the authority to make administrative rules is not a delegation of legislative power, nor are such rules raised from an administrative to a legislative character because the violation thereof is punished as a public offense.
>
> It is true that there is no act of Congress which, in express terms, declares that it shall be unlawful to graze sheep on a forest reserve. But the statutes, from which we have quoted, declare, that the privilege of using reserves for "all proper and lawful purposes" is subject to the proviso that the person so suing them shall comply "with the rules and regulations covering such forest reservation." The same act makes it an offense to violate those regulations, that is, to use them otherwise than in accordance with the rules established by the

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> Secretary. Thus the implied license under which the United States had suffered its public domain to be used as a pasture for sheep and cattle, mentioned in Buford v. Houtz, 133 U.S. 326, was curtailed and qualified by Congress, to the extent that such privilege should not be exercised in contravention of the rules and regulations. Wilcox v. Jackson, 13 Pet. 498, 513.
>
> If, after the passage of the act and the promulgation of the rule, the defendants drove and grazed their sheep upon the reserve, in violation of the regulations, they were making an unlawful use of the Government's property. In doing so they thereby made themselves liable to the penalty imposed by Congress.

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And it been held that rules and regulations issued pursuant to congressional authority supersede conflicting State law.

CONTROL OVER FEDERAL CONSTRUCTION: Building codes and zoning.--In United States v. City of Chester, 144 F.2d 415 (C.A. 3, 1944), in which the city had attempted to require the United States Housing Authority to comply with local building regulations in the construction of war housing in an area not under Federal legislative jurisdiction, it was held (pp. 419-420):

The authority of the Administrator to proceed with the building of the Chester project under the Lanham Act without regard to the application of the Building

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Code Ordinance of Chester is to be found in the words of Clause 2 of Article VI of the Constitution of the United States which provides that the Constitution and the laws of the United States made in pursuance thereof shall be the supreme law of the land. The questions raised by the defendants were settled in general principle as long ago as the decision of Mr. Chief Justice Marshall in M'Culloch v. Maryland, 4 Wheat. 316, 405, 4 L.Ed. 579, wherein it was stated, "If any one proposition could command the universal assent of mankind, we might expect it would be this--that the government of the Union, though limited in its powers, is supreme within its sphere of action. * * *."

The court added (p. 420):

A state statute, a local enactment or regulation or a city ordinance, even if based on the valid police powers of a State, must yield in case of direct conflict with the exercise by the Government of the United States of any power it possesses under the Constitution. * * *

This decision was cited with approval and followed in Curtis v. Toledo Metropolitan Housing Authority, et al., Ohio Ops. 423, 78 N.E.2d 676 (1947); Tim v. City of Long Branch, 135 N.J.L. 549, 53 A.2d 164 (1947); and in United States v. Philadelphia, 56 F.Supp. 862 (E.D.Pa., 1944), aff'd., 147 F.2d 291 (C.A. 3, 1945), cert. den., 325 U.S. 870. The only decision to the contrary was rendered in Public Housing Administration v. Bristol Township, 146 F.Supp. 859 (E.D. Pa., 1956). Except for the last-cited decision, in which a motion to vacate is now reported to have been granted, the results reached in these cases are substantially the same as that reached in Oklahoma City v. Sanders, 94 F.2d 323 (C.A. 10, 1938), in which it was concluded that local requirements could not be enforced against a contractor constructing buildings in an area of partial jurisdiction.

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The Congress, by section 1 (b) of the Lanham act (42 U.S.C. 1521 (b)), had expressly authorized construction of

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the housing involved in the City of Chester case without regard to State or municipal ordinances, rules or regulations relating to plans and specifications or forms of contract. However, as the trial court indicated in the Philadelphia case (56 F.Supp. 864), such a provision was unnecessary.

The case of Tim v. City of Long Branch, supra, is the only instance which has been noted of attempted imposition, though judicial action, of zoning limitations of State or local governments

on use of real property owned by the Federal Government. Other such problems have arisen, nevertheless. In a case where the Federal Government was merely a lessee of privately owned property, however, it was held that the denial by a city zoning board of an application made by the lessor for the use of a lot as a substation post office was not unconstitutional as an unlawful regulation of property of the Federal Government. Mayor and City Council of Baltimore v. Linthicum, 170 Md. 245,183 Atl. 531 (1936). The matter had been considered previously by a lower tribunal,

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and the court invoked the rule of res adjudicata as to all contentions made by the property owner, including constitutional arguments. As to the contention that the application of the zoning ordinance would be an unlawful regulation of property of the United States and an unlawful interference with the mails, the court noted (183 At. 533):

> * * * it may be observed that the property is not owned by the United States; there is only a lease limited to ten years' duration, or the duration of appropriations for rentals, and the lessee has only such property rights as may be derived from the owner. * * * Any interference of the local police regulations with the mails would be, at most, an indirect one, and to pass on the objection on that ground we should have to consider the rule and the decisions on local regulations interfering only incidentally with federal powers. Convington & C.Bridge Co. v. Kentucky 154 U.S. 204, 14 S.Ct. 1087, 38 L.E.d. 962; 2 Willoughby, United States Constitutional Law, Secs. 598, 601, 602, and 605. We do not pass on it because it is foreclosed as stated.

Contractor licensing.--The United States Supreme Court has held that a State may not require that a contractor with the Federal Government secure a license from the State as a condition precedent to the of his contract. Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956). After citing a Federal statute requiring bids to be awarded to a responsible bidder whose bid was most advantageous to the Federal Government, and after noting that the Armed Services Procurement Regulations listed criteria for determining responsibility and that these criteria were similar to those contained in the

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Arkansas law as qualifying requirements for a license to operate as a contractor, the court said (pp. 189-190):

> Mere enumeration of the similar grounds for licensing under the state statute and for finding "responsibility" under the federal statute and regulations is sufficient to indicate conflict between this license requirement which Arkansas places on a federal contractor and the action which Congress and the Department of Defense have taken to insure the reliability of person and compaction with the Federal Government. Subjecting a federal contractor to the Arkansas contractor license requirements would give the State's licensing board a virtual

> power of review over the federal determination of "responsibility" and would thus frustrate the expressed federal policy of selecting the lowest responsible bidder. * * *

While it appears to be the weight of authority that neither a State nor a local subdivision may impose its building codes or license requirements on contractors engaged in Federal construction, it does not follow that the contractor may ignore all State law. For example, the State's laws concerning negligence would continue to be applicable, and such negligence might be predicated upon the contractor's noncompliance with a State statute relating to safety requirements. Thus, in Stewart & Co. v. Sadrakula, 309 U.S. 94 (1940), it was held that, under the international law rule, such a State statute governed the rights of the parties to a negligence action. While this case involved an area of exclusive Federal legislative jurisdiction, that fact is not controlling on the issue concerned. Obviously the statute also would have been held applicable in the absence of legislative jurisdiction in the Federal Government.

The Supreme Court held that the application of such safety requirements would not interfere with the construction of the building. In answer to the argument that compliance with such requirements might increase the cost of the building, the court said (p. 104), that such contention "ignores the power of Congress to protect the performance of the functions of the National Government and to prevent interference therewith through any attempted state action."

In Penn Dairies, Inc., et al. v. Milk Control Commission of Pennsylvania, 318 U.S. 261 (1943), the Supreme Court said of a price regulation held applicable to a Federal contractor which would incidentally affect the Government (p. 269):

> * * * We may assume that Congress, in aid of its granted power to raise and support armies, Article I, Sec. 8, c. 12, and with the support of the supremacy clause, article VI, Sec. 2, could declare state regulations like the present inapplicable to sales to the government. * * *

In the same opinion, the court said also (p. 271):

> Since the Constitution has left Congress free to set aside local taxation and regulation of government contractors which burden the national government, we see no basis for implying from the Constitution alone a restriction upon such regulations which Congress has not seen fit to impose, unless the regulations are shown to be inconsistent with Congressional policy. * * *

The views expressed by the Supreme court in this case concerning the power of Congress to create such immunity in Federal contractors were subsequently applied in Carson v. Roane-Anderson Company, 342 U.S. 232 (1952), in which it was held that Congress had immunized contractors of the Atomic Energy Commission from certain State taxes, and also

in Leslie Miller, lnc. v. Arkansas, 352 U.S. 187 (1956), in which the Supreme Court concluded that the State's regulations relating to the licensing of contractors were in conflict with the regulations established by the Department of Defense and therefore were inapplicable to a contractor with that Department.

CHAPTER X

FEDERAL OPERATIONS NOT RELATED TO LAND

STATE LAWS AND REGULATIONS RELATING TO MOTOR VEHICLES: Federally owned and operated vehicles.--In an opinion by Justice Holmes, it was concluded by the Supreme Court that a State may not constitutionally require a Federal employee to secure a driver's permit as a perquisite to the operation of a motor vehicle in the course of his federal employment. Johnson v. Maryland, 254 U.S. 51 (1920). The court said (pp. 56-67):

> Of course an employee of the United States does not secure a general immunity from state law while acting in the course of his employment. That was decided long ago by Mr. Justice Washington in United States v. Hart, Pat. C.C. 390. 5 Ops.Atty.Gen. 554. It very well may be that, when the United States has not spoken, the subjection to local laws would extend to general rules that might affect incidentally the mode of carrying out the employment--as, for instance, a statute or ordinance regulating the mode of turning at the corners of streets. Commonwealth v. Closson, 229 Massachusetts, 329. This might stand on much the same footing as liability under the common law of a State to a person injured by the driver's negligence. But even the most unquestionable and those concerning murder, will not be allowed to control the conduct of a marshal of the United States acting under and in pur-

> suance of the laws of the United States. In re Neagle, 135 U.S. 1.
>
> It seems to us that the immunity of the instruments of the United States from state control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a state officer upon examination that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those hat the Government has pronounced sufficient. It is the duty of the department to employ persons competent for their work and that duty it must be presumed has been performed. Keim v. United States, 177 U.S. 290, 293.

Even earlier, but on similar principles, the Comptroller of the Treasury had disallowed payment of a fee for registration of a federally owned motor vehicle. 115 Comp. Dec. 231 (1908).

In Ex parte Willman, 277 Fed. 819 (S.D.Ohio, 1921), the driver of a mail truck, on a street which was a post road, was held not to be subject to arrest, conviction, and imprisonment because the lights on his truck, which were those prescribed by the regulations of the

Post Office department, did not conform to the requirements of a State statute. The court relied on Johnson v. Maryland, supra, and Ohio v. Thomas, 173 U.S. 276 (1899), in reaching its conclusion.

An apparently contrary conclusion was reached in Virginia v. Stiff, 144 F.Supp. 169 (W.D.Va., 1956), in which the question was presented as to whether State regulations as to the maximum weight of vehicles using the highways were applicable to a truck owned and operated by the Federal Government, and engaged on Federal business. In holding such

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regulations to be applicable so as to subject the Government employee truck driver to a criminal penalty, the court stated that their purpose is to protect the safety of travellers and to protect the roads from unreasonable wear; that the State of Virginia authorizes the use of highways by overweight vehicles in case of emergency; and that the Department of Defense seeks permits from the State to authorize the passage of overweight vehicles. It appears that in this case no facts were presented to indicate whether there was any federally imposed requirement upon the driver to operate the overweight truck, the defense being based merely on federal ownership of the truck and the fact of its being engaged on Government business.

When Federal employees have failed to comply with local traffic regulations, the courts have generally applied the test of whether noncompliance was essential to the performance of their duties. Thus, in Commonwealth v. Closson, 229 Mass. 329, 118 N.E. 653 (1918), it was held that a mail carrier is subject to the rules and regulations made by the street and park commissioners requiring a traveller to drive on the right side of the road and in turning. In United States v. Hart, 26 Fed. Cas. 193, No. 15,316 (C.C.D.Pa., 18107), it was held that an act of Congress prohibiting the stopping of the mail is not to be so construed as to prevent the arrest of the driver of a mail carriage when he is driving through a crowded city at such a rate as to endanger the lives of the inhabitants. In Hall v. Commonwealth, 129 Va. 738, 105 S.E. 551 (1921), it was held that the driver of a postal truck must comply with the State's speed laws. The court emphasized that no time schedules had been established by the Post Office Department which would require excessive speed.

That a Federal employee is not immune from arrest for noncompliance with State traffic regulation where performance of his duties did not necessitate such noncompliance

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is well illustrated by the following excerpt from the opinion of the court in Oklahoma v. Willingham, 143 F.Supp. 445 (E.D.Okla., 1956, (p. 448):

> The State of Oklahoma has not only the right hut the responsibility to regulate travel upon its highways. The power of the state to regulate such travel has not been surrendered to the Federal Government. An employee of the Federal Government must obey the traffic laws of the state although he may be traveling in the ordinary course of his employment. No law of the United States authorizes a rural mail carrier, while engaged

> in delivering mail on his route, to violate the provisions of the state those who use the highways.
>
> Guilt or innocence is not involved, but there is involved a question of whether or not the prosecution is based on an official act of the defendant. There is nothing official about how or when the defendant re-entered the lane of traffic on the highway. There is no official connection between the acts complained of and the official duties of the mail carrier. The mere fact that the defendant was on duty and delivering mail along his route does not present any federal question and administration of the work of the Post Office Department does not require a carrier, while delivering mail, to drive his car from a stopped position into the path of an approaching automobile. When he is charged with doing so, his defense is under state law and is not different from that of any other citizen.

Where, on the other hand, the Federal employee could not discharge his duties without violating State or local traffic regulations, it has been that he is immune from any liability under State or local law for such noncompliance. Thus, in Lilly v. West Virginia, 29 F.2d 61 (C.A. 4, 1928), the court

held that a Federal prohibition agent, who struck and killed a pedestrian while pursuing a suspected criminal, was excepted from limitations of speed prescribed by a city ordinance, provided that he acted in good faith and with the acre that an ordinarily prudent person would have exercised under the circumstances, the degree of care being commensurate with the dangers. The court said (p. 64):

> The traffic ordinances of a city prescribing who shall have the right of way at crossings and fixing speed limits for vehicles are ordinarily binding upon officials of the federal government as upon all other citizens. Commonwealth v. Closson, 229 Mass. 329, 118 N.E. 653, L.R.A. 1918C, 939; United States v. Hart, 26 Fed. Cas. No. 15,316, page 193; Johnson v. Maryland, 254 U.S. 51, 41 S.Ct. 16, 65 L.Ed. 126. Such ordinances, however, are not to be construed as applying to public officials engaged in the performance of a public duty where speed and the right of way are a necessity. The ordinance of Huntington makes no exemption in favor of firemen going to a fire or peace officers pursuing criminals, but it certainly could not have been intended that pedestrians at street intersections should have the right of way over such firemen or officers, or that firemen or officers under such circumstances should be limited to a speed of 25 miles, or required to slow down at intersections so as to have their vehicles under control. Such a construction would render the ordinances void for unreasonableness in so far as they applied to firemen or officers engaged in duties, in the performance of which speed is necessary; and we think that they should be construed as not applicable to such officers, either state or federal, under such circumstances. State v. Gorham, 110 Wash. 330, 188 P.457, 9 A.L.R. 365; Farley v. Mayor of New York City, 152 N.Y. 222, 46 N.E.D 506, 57 Am. St. Rep. 511; Hubert v. Granzow, 131 Minn. 361, 155 N.W. 204, Ann. Cas.

1917D, 563; State v. Burton, 41 R.I. 303, 103 A. 962, L.R.A. 1918F, 559; Edberg v. Johnson, 149 Minn. 395, 184 N.W. 12.

Similarly, in State v. Burton, 41 R.I. 303, 103 Atl. 962 (1918), it was held that a member of the United States naval reserve, driving a motor vehicle along a city street in the performance driving a motor vehicle along a city street in the performance of an urgent duty to deliver a dispatch under instructions from his superior officer, is not amenable to local law regulating the speed of motor vehicles. State laws, the court held, are subordinate to the exigencies of military operations by the Federal Government in time of war.

Closely allied to these cases relating to the applicability of State and local traffic regulations to Federal employees is the case of Bennett v. Seattle, 22 Wash.2d 455, 156 P.2d 685 (1945), in which State traffic regulations were held to have been suspended as a consequence of certain action taken by the military. Under the facts of the case, it appears that the plaintiff in a negligence action was walking on the right, instead of the left, side of the street, the latter ordinarily being required by State law. The court did not regard the State law as applicable in view of the closing of the particular street to the public by Army officers. As to the Army's action, the court said (156 P.2d 687):

> The highway was closed to general public travel in December, 1941. Public authority acquiesced in the action taken by the army officers. The appellant does not question the right and power of the officers of the army to close the part of Sixteenth avenue from east Marginal way to the bridge to public travel and to admit into the bridge to public travel and to admit into the closed area only such Buses and automobiles of employees of the Boeing plant as they deemed advisable; but it contends that, notwithstanding this, such part of Sixteenth avenue did not cease to be a public highway and that the statutory rules of the road still applied.
>
> * * * * *

> The action taken in closing the highway to public use did not infringe upon, or interfere with, the exercise of any prerogative of sovereignty or any governmental function of the state or its legal subdivisions. The appellant, in maintaining its streets, acts in a proprietary capacity, and it acquired no right in a statutory rule of conduct by a pedestrian on the highway that would prevent its temporary suspension when such became necessary or convenient by an exercise of a war power of the kind we are new considering.

Vehicles operated under Federal contract.--State laws which constitutionally cannot have any application to motor vehicles owned and operated by the Federal Government may, in many instances, be applicable to motor vehicles which are privately owned but which, under contract with the Federal Government, are used for many of the same purposes for which federally owned vehicles are used. A

distinction must be made on the basis of ownership; the ownership may be of decisive significance.

Thus, it has been held that a State may tax vehicles which are used in operating a stage line and make constant use of the highways, notwithstanding the fact that they carry mail under a Federal contract; moreover, such tax may be measured by gross receipts, even though over on-half of the taxes income is derived from mail contracts. Alward v. Johnson, 282 U.S. 509 (1931). The Supreme Court said (p. 514):

> Nor do we think petitioner's property was entitled to exemption from state taxation because used in connection with the transportation of the mails. There was no tax upon the contract for such carriage; the burden laid upon the property employed affected operations of the Federal Government only remotely. Railroad Co. v. Peniston, 18 Wall. 5, 30; Metcalf & Eddy v. Mitchell,

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> 269 U.S. 514. The facts in Panhandle Oil Co. v. Mississippi, 277 U.S. 218, and New Jersey Bell Tel. Co. v. State Board, 280 U.S. 338, were held to establish direct interference with or burden upon the exercise of a Federal right. The principles there applied are not controlling here.

In reliance on this case, it was concluded, in Crowder v. Virginia, 197 Va. 96, 87 S.E.2d 745 (1955), app. dism., 250 U.S. 957, that a carrier is not exempt from a State's gross receipts tax even though, under a contract with the Post Office Department, it was engaged in the interstate carriage of mails, under direction from the Government as to routes, schedules and termini. A contractor engaged in transporting mail is not exempt from payment of State motor fuel taxes. Op.A.G., Ill., p. 219, No. 2583 (Apr. 21, 1930). Nor is a contractor who is engaged in work for the Federal Government on a cost-plus-a-fixed-fee basis. Id. p. 252, No. 199 (Nov. 19, 1940). In Baltimore & A.R.R. v. Lichtenberg, 176 Md. 383, 4 A.2d 734 (1939), app. dism., 308 U.S. 525, a contractor with the federal Government for the transportation of workmen to a Government project was held subject to State regulation as a common carrier. In Ex parte Marshall, 75 Fla. 97, 77 So. 869 (1918), it was held that a bus company which enters into a contract with the military to transport troops between a military camp and a city, subject to terms and conditions specified in the contract, the United States having no other interest or ownership in or control over the buses, is liable to pay a local license tax for the operation of the buses. In reliance on

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the decision in Ex parte Marshall, supra, it was held in State v. Wiles, 116 Wash. 387, 199 P. 749 (1921), that a contractor engaged in carrying mail for the United States within the State is not exempt from a State statute making it unlawful to operate motor trucks on the highways without first securing a license therefor, the fee varying according to the capacity of the truck. The court said that such a fee is not a direct tax on the property of the Federal

Government or on instrumentalities used by it in the discharge of its constitutional functions, but at most an indirect and immaterial interference with the conduct of government business.

Even though title to a vehicle is not in the Federal Government, a State vehicle tax may not be levied on an automobile owned by a Federal instrumentality has been declared to be immune from State taxes. See Roberts v. Federal Land Bank of New Orleans, 189 Miss. 898, 196 So. 763 (1940). And in an early case, United States v. Barney, 24 Fed. Cas. 1014. No. 14,525 (D.Md., circa 1810), it was held that a Federal statute prohibiting the stoppage of the mails serves to prevent the enforcement, under State law, of a lien against privately owned horses used to draw mail carriages.

STATE LICENSE, INSPECTION AND RECORDING REQUIREMENTS: Licensing of Federal activities.--The case of United States v. Murray, 61 F.Supp. 415 (E.D.Mo., 1945), involved a holding that a local subdivision could not require an inspector employed by the Office of Price Administration

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to conform with local requirements covering food handlers. The court said (p. 417):

> It is fundamental that the officers, agents, and instruments of the United States are immune from the provisions of a city ordinance in the performance of their duties. This principle of law, while having exceptions not here involved, applies to the ordinance alleged to have been the basis of the defendants' conduct in this case. It is the duty of the Government and its agencies to employ persons qualified and competent for their work. That duty it must be presumed to have performed, and a city cannot by ordinance impose further qualifications upon such officers and agents as a condition precedent to the performance and execution of duties prescribed under federal law.

Applicability of inspection laws to Federal functions.--The United States Supreme Court has held that a State's inspection laws generally are inapplicable to activities of the Federal

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Government, even though such laws may be for the protection of the general public. Mayo v. United States, 319 U.S. 441 (1943). In that case a State was held to be without consti-

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tutional power to exact an inspection fee with respect to fertilizers which the Federal Government owned and distributed within the State pursuant to provisions of the Soil Conservation and Domestic Allotment Act. The court said (pp. 447-448):

> These inspection fees are laid directly upon the United States. They are money exactions the payment of which, if they are enforceable, would be required before executing a function of

> government. Such a requirement is prohibited by the supremacy clause. * * * These fees are like a tax upon the right to carry on the business of the post office or upon the privilege of selling United States bonds through federal officials. Admittedly the state inspection service is to protect consumers from fraud but in carrying out such protection, the federal government must be left free. This freedom is inherent in sovereignty. The silence of Congress as to the subjection of its instrumentalities, other than the United States, to local taxation or regulation is to be interpreted in the setting of the applicable legislation and the particular exaction. Shaw v. Gibson Zahniser Oil Corp., 276 U.S. 575, 578. But where, as here, the governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to regulation or taxation, the inherent freedom continues.

Recording requirements.--It has also been held that the Federal Government is not required to comply with State recording requirements in order to protect its rights. In the Matter of American Boiler Works, Inc., Bankrupt, 220 F.2d 319 (C.A. 3, 1955); see also Norman Lumber Co. v. United States, 223 F.2d 868 (C.A. 4 1955). In In re Read-York, Inc., 152 F.2d 313 (C.A. 7, 1945), it was held that the failure

of the Federal Government to record a contract for the manufacture and delivery of gliders to the Army, in compliance with Wisconsin's public policy and statutes, did not prevent title from passing to the Federal Government, upon the making of partial payments, as against the manufacturer's trustee in bankruptcy. These results are in accord with an earlier decision by the United States Supreme Court, in United States v. Snyder, 149 U.S. 210 (1893), in which it was held that the lien imposed by Federal statute to secure the payment of a Federal tax is not subject to the requirement of a State statute that liens shall be effective only if recorded in the manner specified by the State statute. In United States v. Allegheny County, 322 U.S. 174 (1944), the court said (p. 183):

> * * * Federal statutes may declare liens in favor of the Government and establish their priority over subsequent purchasers or lienors irrespective of state recording acts. * * * Or the Government may avail itself, as any other lienor, of state recording facilities, in which case, while it has never been denied that it must pay nondiscriminatory fees for their use, the recording may not be made the occasion for taxing the Government's property.* * *

The courts of the State of Virginia have also recognized that State registration requirements can have no application to the Federal Government. In United States v. William R. Trigg Co., 115 Va. 272, 78 S.E. 542 (1912), the question was presented as to whether the Federal Government is required to comply with the State registry laws and have its contracts recorded in order to make effective the liens reserved in such contracts, as against those who have no prior liens. The court said (78 S.E. 544):

> This power to contract, which is an incident of the sovereignty

of the United States, and is, as stated by Judge Marshall, coextensive with the duties and powers of government, carries with it complete exemption of the

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government from all obligation to comply with State registry laws, for the reason that it would grievously retard, impede, and burden the sovereign right of the government to subject it to the operation of such laws. * * *

If the states had the power to interfere with the operations of the federal government by compelling compliance on its part with state laws, such as the registry statutes, then, in the language of the Supreme Court, the potential existence of the government would be at the mercy of state legislation. * * *

While State recording requirements cannot in any way be applicable to the Federal Government, and while noncompliance therewith will not serve to dilute the right of the Federal Government, it is clear that should the Federal Government decide to avail itself of State recording facilities it must pay to the State a reasonable fee therefor, but it cannot be subjected, without its consent, to State taxes which may be imposed upon such recordation. Federal Land Bank of New Orleans v. Crosland, 261 U.S. 374 (1923). In Pittman v. Home Owners' Loan Corp., 308 U.S. 21 (1939), it was held that the Maryland tax on mortgages, graded according to the amount of the loan secured and imposed in addition to the ordinary registration fee as a condition to the recordation of the instrument, cannot be applied to a mortgage tendered for record by the Home Owners' Loan Corporation, in view of the provisions of the Home Owners' Loan act which declares the corporation to be an instrumentality of the Federal Government and which provides for its exemption from all State and municipal taxes. In the course of its opinion, the court said (pp. 32-33):

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We assume here, as we assumed in Graves v. New York ex rel. O'Keefe, 306 U.S. 466, that the creation of the Home Owners' Loan Corporation was a constitutional exercise of the Corporation through which the national government lawfully acts must be regarded as governmental functions and as entitled to whatever immunity attaches to those functions when performed by the government itself through its departments. McCulloch v. Maryland, 4 Wheat. 316, 421, 422; Smith v. Kansas City Title Co., 255 U.S. 180, 208, 209; Graves v. New York ex rel. O'Keefe, supra. Congress has not only the power to create a corporation to facilitate the performance of governmental functions, but has the power to protect the operations thus validly authorized. "A power to create implies a power to preserve." McCulloch v. Maryland, supra, p. 426. This power to preserve necessarily comes within the range of the express power conferred upon Congress to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States. Const. Art. I, Sec. 8, par. 18. In the exercise of this power to

protect the lawful activities of its agencies, Congress has the dominant authority which necessarily inheres in its action within the national field. The Shreveport Case, 234 U.S. 342, 351, 352. The exercise of this protective power in relation to state taxation has many illustrations. See, e.g., Bank v. Supervisors, 7 Wall. 26, 31; Choate v. Trapp, 224 U.S. 665, 668, 669; Smith v. Kansas City Trapp Co., supra, p. 207; Trotter v. Tennessee, 290 U.S. 354, 356; Lawrence v. Shaw, 300 U.S. 245, 249. In this instance, Congress has undertaken to safeguard the operations of the Home Owners' Loan Corporation by providing the described immunity. As we have said, we construe this provision as embracing

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and prohibiting the tax in question. Since Congress had the constitutional authority to enact this provision, it is binding upon this Court as the supreme law of the land. Const. Art. VI.

APPLICABILITY OF STATE CRIMINAL LAWS TO FEDERAL EMPLOYEES AND FUNCTIONS: Immunity of Federal employees.--It is well established that an employee of the Federal Government is not answerable to State authorities for acts which he was authorized by Federal laws to perform. In In re Neagle, 135 U.S. 1 (1890), it was held that the State of California had no criminal jurisdiction over an acting deputy United States marshal who committed a homicide in the course of defending a United States Supreme Court justice while the latter was in that State in the performance of his judicial functions; that a wit of habeas corpus is an appropriate remedy for freeing such employee from the custody of State authorities; and that the Federal courts may determine the propriety of the employee's conduct under Federal law. The court said (p. 75):

* * * To the objection made in argument, that the prisoner is discharged by this writ from the power of the state court to try him for the whole offence, the reply is, that if the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, which it was his duty to do as marshal of the United States, and if in doing that act he did no more than what was necessary and proper for him to do, he cannot be guilty of a crime under the law of the State of California. When these thins are shown, it is established that he is innocent of any crime against the laws of the State, or of any authority whatever. There is no occasion for any further trial in the state court, or in any court. The Circuit Court of the

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United States was as competent to ascertain these facts as may other tribunal, and it was not at all necessary that a jury should be impanelled to render a verdict on them. * * *

The underlying constitutional considerations prompting the conclusion that a State may not prosecute a Federal employee for acts authorized by Federal law were set forth in some detail in Tennessee v. Davis, 100 U.S. 257 (1880). In that case it was held that a State

indictment of a Federal revenue agent for a homicide committed by him in the course of his duties is removable to a Federal court. In its opinion, the court said (pp. 262-263):

> Has the Constitution conferred upon Congress the power to authorize the removal, from a State court to a Federal court, of an indictment against a revenue officer for an alleged crime against the State, and to order its removal before trial, when it appears that a Federal question or a claim to a Federal right is raised in the case, and must be decided therein? A more important question can hardly be imagined. Upon its answer may depend the possibility of the general government's preserving its own existence. As was said in Martin v. Hunter (1 Wheat. 363), "the general government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers." It can act only through its officers and agents, and they must act within the States. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a State, yet warranted by the Federal authority they possess, and if the general government is powerless to interfere at once for their protection,--if their protection must be left to the action of the State court,--the operation of the general government may at any time be arrested at the will of one of its members. The legis-

> lation of a State may be unfriendly. It may affix penalties to acts done under the immediate direction of the national government, and in obedience to its laws. It may deny the authority conferred by those laws. The State court may administer not only the laws of the State, but equally Federal law, in such a manner as to paralyze the operations of the government. And even if, after trial and final judgment in the State court, the case can be brought into the United States court for review, the officer is withdrawn from the discharge of his duty during the pendency of the prosecution, and the exercise of acknowledge Federal power arrested.
>
> We do not think such an element of weakness is to be found in the Constitution. The United States is a government with authority extending over the whole territory of the Union, acting upon the States and upon the people of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it.

The principle that a Federal official or employee is not liable under State law for act done pursuant to Federal authorization has been applied in many instances. Thus, it has been held that a State's laws relating to homicide or assault cannot be enforced against a Federal employee who, while carrying out his duties, committed a homicide or assault in the course of making an arrest, maintaining the peace, or pursuing a fugitive. Brown v. Cain, 56 F.Supp. 56 (E.D.Pa., 1944); Castle v. Lewis, 254 Fed. 917 (C.A. 8,

1918); Ex parte Dickson, 14 F.2d 609 (N.D.N.Y., 1926); Ex parte Warner, 21 F.2d 542 (N.D.Okla., 1927); In re Fair, 100 Fed. 149 (C.C.

D. Neb., 1900); In re Laing, 127 Fed. 213 (C.C.S.D.W.Va., 1903); Kelly v. Georgia, 68 Fed. 652 (S.D.Ga., 1895); North Carolina v. Kirkpatrick, 42 Fed. 689 (C.C.W.D.N.C., 1890); United States v. Fullhart, 47 Fed. 802 (C.C.W.D.Pa., 1891); United States v. Lewis, 129 Fed. 823 (C.C.W.D.Pa., 1904), aff'd., 200 U.S. 1 (1906); United States v. Lipssett, 156 Fed. 65 (W.D. Mich., 1907).

It has likewise been held that a United States marshal cannot be subjected to arrest and imprisonment by a State for acts done pursuant to the commands of a writ issued by a Federal court. Anderson v. Elliott, 101 Fed. 609 (C.A. 4, 1900), app. dism., 22 S.Ct. 930, 46 L.Ed. 1262 (1902); Ex parte Jenkins, 13 Fed. Cas. 445, No. 7,259 (C.C.E.D.Pa., 1953). A State militia officer who, under the orders of a governor of a State, employs force to resist and prevent a United States marshal from executing process issued under a Federal decree is subject to punishment for violating the laws of the United States. United States v. Bright, 24 Fed. Cas. 1232, No. 14,647 (C.C.D.Pa., No. 15,320 (C.C.D.Md., 1845), Justice Taney held that on an indictment for obstructing the mails it is no defense that a warrant had been issued under State law in a civil suit against the mail carrier.

Obstruction of Federal functions.--It has been held in a number of cases that State laws will not be applied to Federal employees or their activities where the application of such laws would serve to obstruct the accomplishment of legitimate Federal objectives. Thus, a State law prohibiting the carrying of arms may not be applied to a deputy United States marshal seeking to make an arrest. In re Lee, 46 Fed. 59 (D.Miss., 1891), (but this case was reversed--47 Fed. 645--on the basis of a Federal statute which limited the authority of marshals to the State for which they were appointed. Marshals now may carry firearms, nevertheless--see U.S.C. 3053). A State statute providing for the punishment of one who maliciously threatens to accuse a person of a crime in or-

der to compel him to do an act has no application to a United States pension examiner who is charged with the duty of investigating fraudulent pension claims. In re Waite, 81 Fed. 359 (N.D.Iowa, 1897), app. dism., 180 U.S. 635. Nor may a State proceed against a Federal military officer for allegedly disturbing the peace in clearing a roadway of civilians to enable a military company to proceed to a place where a National Guard recruitment program was being conducted, it has been held. In re Wulzen, 235 Fed. 362 (S.D. Ohio, 1916).

Nearly all the case cited immediately above involved the release, by a Federal court, on a writ of habeas corpus, of a prisoner from State custody. On the other hand, a prisoner held pursuant to Federal authority is beyond the reach of the pursuant to State for release by writ of habeas corpus. See Adbeman v. Booth, 21 How. 506 (1859); Tarble's Case, 13 Wall. 397 (1871). Similarly, property obtained by a United States marshal by virtue of a levy of execution under a judgment of a Federal court may not be recovered by

an action for replevin in a State court. See Covell v. Heyman, 111 U.S. 176 (1884). In Ex parte Robinson, 20 Fed. Cas. 965, No. 11934 (C.C.S.D.Ohio, 1856), it was held that a Federal court may order the discharge of a Federal marshal who was held in State custody for contempt because of his refusal to produce certain persons named in a writ of habeas corpus issued by a State judge.

Liability of employees acting beyond scope of employment.--Federal officials and employees are not, of course, above the laws of the State. Whatever their exemption from State law while engaged in performing their Federal functions, this exemption does not provide an immunity from arrest for the commission of a felony not related to the carrying out of the functions. United States v. Kirby, 7 Wall. 482(1868). In In re lewis, 83 Fed. 159 (D.Wash., 1897), it was stated that a Federal officer who, in the performance of what he conceives to be his official duty, transcends his au-

thority and invades private rights, is liable to the individuals injured by his actions (however, it has been held that absent criminal intent he is not liable under the criminal laws of the State). Employment as a mail carrier does not provide the basis for an exemption from the penalty under a State statute prohibiting the carrying of concealed weapons, in the absence of a showing of "authority from federal government empowering him as a mail carrier to carry weapons in a manner prohibited by state laws." Hathcote v. State, 55 Ark. 183, 17 S.W. 721 (1891). However, even when a soldier is subject to punishment by a State, for an act not connected with his duties as a soldier, when the punishment will serve to interfere with the performance of duties owned by him to the Federal Government a Federal court will require utmost good faith on the part of the State authorities, and any unfair or unjust discrimination against the offender because he is a soldier, or departure from the strict requirements of the law, or any cruel or unusual punishment, may be inquired into by the federal courts in proceedings instituted by the soldier's commanding officer. The imposition of a sentence of sixty days for an offense which did not result in injury to person or property was held unwarranted, and the court discharged the soldier on a writ of habeas corpus. Ex parts Schlaffer, 154 Fed. 921 (S.D.Fla., 1907).

LIABILITY OF FEDERAL CONTRACTORS TO STATE TAXATION: Original immunity of Federal contractors.--In Panhandle Oil Company v. Knox, 277 U.S. 218 (1928), it was held that a State tax imposed on dealers in gasoline for the privilege of selling, and measured at so many cents per gallon of gasoline sold, is void under the Federal Constitution as applied to sales to instrumentalities of the Federal Government, such as the Coast Guard Fleet and a veterans' hospital. In Graves v. Texas Company, 298 U.S. 393 (1939), the court struck down as violative of the Constitution, when applied to sales to the Federal Government, a State tax providing that, "every distributor, refiner, retail dealer or storer of gaso-

line * * * shall pay an excise tax of six cents ($0.06) per gallon

upon the selling, distributing, storing or withdrawing from storage in this State for any use, gasoline * * *". The court held that a tax on storage, or withdrawal from storage, essential to sales of gasoline to the Federal Government, is as objectionable, constitutionally, as a tax upon the sales themselves. However, even in that day it was held that a tax was not objectionable merely because the person upon whom it was imposed happened to be a contractor of a government Metcalf & Eddy v. Mitchell, 269 U.S. 514 (1926).

Later view of contractors' liability.--In the decisions rendered by the Supreme Court, beginning in 1937 to date, the earlier decisions have not been followed. New tests for measuring the validity of State taxes on federal contractors were devised in James v. Dravo Contracting Co., 302 U.S. 134 (1937). One of the issues involved in that case was whether a gross sales and income tax imposed by a State on a Federal contractor doing work on a Federal dam is invalid on the ground that it lays a direct burden upon the Federal Government. In sustaining the validity of the tax, the court observed (1) that the tax is not laid upon the Federal Government, its property or officers; (2) that it is not laid upon an instrumentality of the Federal Government; and (3) that it is not laid upon the contract of the Federal Government. The decision in the Panhandle case, supra, was limited to the facts involved in that case. The fact that the State the State tax might increase the price to the Federal Government did not, the court indicated, render it constitutionally objectionable. In answer to the argument that a State might, conceivably, increase the tax from 2% to 50%, the court said (302 U.S. 161):

> * * * The argument ignores the power of Congress to protect the performance of the functions of the National Government and to prevent interference there with through any attempted state action. * * *

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In Alabama v. King & Boozer, 314 U.S. 1 (1941), the court not only made a further departure from the doctrine of the Panhandle case, but it expressly overruled the decision in that case. Involved was a sale of lumber by King & Boozer to "cost-plus-a-fixed-fee" contractors for use by the latter in constructing an army camp for the Federal Government. The question presented for the Federal Government. The question presented for decision was whether the Alabama sales tax with which the seller was chargeable, but which he was required to collect from the buyer, infringes any constitutional immunity of the Federal Government from State taxation. In sustaining the tax, the court said (pp. 8-9):

> * * * The Government, rightly we think, disclaims any contention that the Constitution, unaided by Congressional legislation, prohibits a tax exacted from the Congressional legislation, prohibits a tax exacted from the contractors merely because it is passed on economically, by the terms of the contract or otherwise, as a part of the construction cost to the Government. So far as such a non-discriminatory state tax upon the contractor enters into the cost of the materials to the Government, that is but a normal incident of the organization within the same territory of two independent taxing

> sovereignties. The asserted right of the one to be free of taxation by the other does not spell immunity from paying the added costs, attributable to the taxation of those who furnish supplies to the Government and who have been granted no tax immunity. So far as a different view has prevailed, see Panhandle Oil Co. v. Knox, supra; Graves v. Texas Co., supra, we think it no longer tenable. * * *

The court rejected the Government's contention that the legal incidence of the tax was on the Federal Government (p. 14):

> We cannot say that the contractors were not, or that the Government was, bound to pay the purchase price, or that the contractors were not the purchasers on whom the statute lays the tax. The added circum-

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> stance that they were bound by their contract to furnish the purchased material to the Government and entitled to be reimbursed by it for the cost, including the tax, no more results in an infringement of the Government immunity than did the tax laid upon the contractor's gross receipts from the Government in James v. Dravo Contracting Co., supra. * * *

Immunity of Federal property in possession of a contractor.-- Where, however, the tax is on machinery owned by the Federal Government, or where the tax imposed by a State on a contractor of the Federal Government is based, in part, upon the value of the machinery which is owned by the Federal Government but which is installed in the contractor's plant, the tax is objectionable on constitutional grounds. Thus, in United States v. Allegheny County, 322 U.S. 174 (1944), the court, in holding such a tax to be invalid, said (pp. 182-183):

> Every acquisition, holding, or disposition of property by the Federal Government depends upon proper exercise of a constitutional grant of power. In this case no contention is made that the contract with Mesta is not fully authorized by the congressional power to raise and sport armies and by adequate congressional authorization to the contracting officers of the War Department. It must be accepted as an act of the Federal Government warranted by the Constitution and regular under statute.
>
> Procurement policies so settled under federal authority may not be defeated or limited by state law. The purpose of the supremacy clause was to avoid the intro-

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> duction of disparities, confusions and conflicts which would follow if the Government's general authority were subject to local controls. The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit,

> all present questions of federal law not controlled by the law of any State. * * *

The court added (pp. 188-189):

> A State may tax personal property and might well tax it to one in whose possession it was found, but it could hardly tax one of its citizens because of moneys of the United States which were in his possession as Collector of Internal Revenue, Postmaster, Clerk of the United States Court, or other federal officer, agent, or contractor. We hold that Government-owned property, to the full extent of the Government's interest therein,s immune from taxation, either as against the Government itself or as against one who holds it as a bailee.

The facts in the Allegheny case were distinguished from those involved in Esso Standard Oil Co. v. Evans, 345 U.S. 496 (1953), in which the Supreme Court sustained a State tax upon the storage of gasoline; the fact that the gasoline was owned by the Federal Government did not, the court held, relieve the storage company of the obligation to pay the tax. The court said (pp. 499-500):

> This tax was imposed because Esso stored gasoline. It is not, as the Allegheny County tax was, based on the worth of the government property. Instead, the worth of the government property. Instead, the amount collected is graduated in accordance with the exercise of Esso's privilege to engage in such operations;

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> so it is not "on" the federal property as was Pennsylvania's. Federal ownership of the fuel will not immunize such a private contractor from the tax on storage. It may generally, as it did here, burden the United States financially. But since James v. Dravo Contracting Co., 302 U.S. 134, 151, this has been no fatal flaw. We must look further, and find either a stated immunity created by Congress in the exercise of a constitutional power, or one arising by implication from our constitutional system of dual government. Neither condition applies to the kind of governmental operations here involved. There is no claim of a stated immunity. And we find none implied. The United States, today, is engaged in vast and complicated operations in business fields, and important purchasing, financial, and contract transactions with private enterprise. The Constitution does not extend sovereign exemption from state taxation to corporations or individuals, contracting with the United States, merely because their activities are useful to the Government. We hold, therefore, that sovereign immunity dies n prohibit this tax.

Economic burden of State taxation on the United States.--The Supreme Courts' emphasis of the legal incidence, test, as distinguished from the rejected test of the economic consequences, is best illustrated in Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110 (1954). In that case, the court held that a State tax of 2% of the gross receipts from all sales in the State could not be applied to transactions whereby private contractors procured two tractors for use in constructing a naval ammunition depot under a cost-plus-a-fixed-fee contract which provided that the contractor should act as a

purchasing agent for the Federal Government and that title to the purchased articles should pass directly from the vendor to the Federal Government, with the latter being solely obligated to

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pay for the articles. The Supreme Court said (pp. 122-123):

> We find that the purchaser under this contract was the United States. Thus, King & Boozer is not controlling for, thought the Government also bore the economic burden of the state tax in that case, the legal incidence of that tax was held to fall on the independent contractor and not upon the United States. The doctrine of sovereign immunity is so embedded in constitutional history and practice that this Court cannot subject the Government or its official agencies to state taxation without a clear congressional mandate. No instance of such submission is shown.
>
> Nor do we think that the drafting of the contract by the Navy Department to conserve Government funds, if that was the purpose, changes the character of the transaction. As we have indicated, the intergovernmental submission to taxation is primarily a problem of finance and legislation. But since purchases by independent contractors of supplies for Government construction or other activities do not have federal immunity from taxation, the form of contracts, when governmental immunity is not waived by Congress, may determine the effect of state taxation on federal agencies, for decisions consistently prohibit taxes levied on the property or purchases of the Government itself.

Legislative exemption of Federal instrumentalities.--The Supreme Court, in the first of the two excerpts quoted above from its opinion in King & Boozer, made reference to legislative exemption. Such legislative exemption of instrumentalities of the Federal Government has been sustained in two relatively recent cases. In federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95 (1941), the Supreme Court held that statutory exemption from State taxation was a good defense to a State's attempt to collect a sales tax on lumber purchased by the Federal Land Bank for repairs to a farm

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which it had acquired by foreclosure. The Supreme Court said (pp. 102-103):

> Congress has constitutionally created. This conclusion follows naturally from the express grant of power to Congress "to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States. Const. Art. I, Sec. 8, par. 18." Pittman v. Home Owners' Loan Corp., 308 U.S. 21, 33, and cases cited. We have held on three occasions that Congress has authority to prescribe tax immunity for activities connected with, or in furtherance of, the lending functions of federal credit agencies. Smith v. Kansas City Title & Trust Co., supra;

> Federal Land Bank v. Crosland, 261 U.S. 374; Pittman v. Home Owners' Loan Corp., supra. * * *

Similarly, in Carson v. Roane-Anderson Company, 342 U.S. 232 (1952), the Supreme Court held that, under the provisions of the Atomic Energy Act, Tennessee could not enforce its sales tax on sales by third persons to contractors of the Atomic Energy Commission. In sustaining the immunity provided by the Atomic Energy Act, the Supreme court said (pp.233-234):

> * * * The constitution power of Congress to protect any of its agencies from state taxation (Pittman v. Home Owners' Loan Corporation, 308 U.S. 21; Federal Land Bank v. Bismarck Co., 314 U.S. 95) has long been recognized as applying to those with whom it has made authorized contracts. See Thomson v. Pacific R. Co., 9 Wall. 579, 588-589; James v. Dravo Contracting Co., 302 U.S. 134, 160-161. Certainly the policy behind the power of Congress to create tax immunities does not turn on the nature of the agency doing the work of the Government. The power stems from the power

> to preserve and protect functions validly authorized (Pittman v. Home Owners' Corp., supra, p. 33)--the power to make all laws necessary and proper for carrying into execution the powers vested in the Congress. U.S. Const., Art. I, Sec. 8, cl. 18.

JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

REPORT OF THE INTERDEPARTMENTAL COMMITTEE FOR THE STUDY OF JURISDICTION OVER FEDERAL AREAS WITHIN THE STATES

PART II

A Text of the Law of Legislative Jurisdiction

Submitted to the Attorney General and transmitted to the President

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CHAPTER III

ACQUISITION OF LEGISLATIVE JURISDICTION

THREE METHODS FOR FEDERAL ACQUISITION OF JURISDICTION: Constitutional consent.--The Constitution gives express recognition to but one means of Federal acquisition of legislative jurisdiction--by State consent under article I, section 8, clause 17. The debates in the Constitutional Convention and State ratifying conventions leave little doubt that both the opponents and proponents of Federal exercise of exclusive legislature jurisdiction over the seat of government were of the view that a constitutional provision such as clause 17 was essential if the Federal government was to have such jurisdiction. At no time was it suggested that such a provision was unessential to secure exclusive legislative jurisdiction to the Federal Government over the seat of government. While, as has been indicated in the preceding chapter, little attention was given in the course of the debates to Federal exercise of exclusive legislative jurisdiction over areas other than the seat of government, it is reasonable to assume that it was the general view that a special constitution provision was essential to enable the United States to acquire exclusive legislative jurisdiction over any area. Hence,the proponents of exclusive legislative jurisdiction over the seat of government and over federally owned areas within the States defended the inclusion in the Constitution of a provision such as article I, section 8, clause 17. And in United States v. Railroad Bridge Co., 27 Fed. Cas. 686, 693, No. 16,114 (C.C.N.D. Ill., 1855), Justice McLean suggested that the Constitution provided the sole mode for transfer of jurisdiction, and that if this mode is not pursued no transfer of jurisdiction can take place.

State cession.--However, in Fort Leavenworth R.R. v. Lowe, 114 U.S. 525 (1885), the United States Supreme Court sustained the validity of an act of Kansas ceding to the United States legislative jurisdiction over the Fort Leavenworth military reservation, but reserving to itself the right to serve criminal and civil process in the reservation and the right to tax railroad, bridge, and other corporations, and their franchises and property on the reservation. In the course of its opinion sustaining the cession of legislative jurisdiction , the Supreme Court said (p. 540):

> We are here net with the objection that the Legislature of a State has no power to cede away her jurisdiction and legislative power over any portion of her territory, except as such cession follows under the Constitution from her consent to a purchase by the United States for some one of the purposes mentioned. If this were so, it would not aid the railroad company; the jurisdiction of the State would then remain as it previously existed. But aside from this consideration, it is undoubtedly

> true that the State, whether represented by her Legislature, or through a convention specially called for that purpose, is incompetent to cede her political jurisdiction and legislative authority over any part of her territory to a foreign country, without the concurrence of the general government. The jurisdiction of the United States extends over all the territory within the States, and therefore, their authority must be obtained, as well as that of the State within which the territory is situated, before any cession of sovereignty or political jurisdiction can be made to a foreign country. * * * In their relation to the general government, the States of the Union stand in a very different position from that which they hold to foreign governments. Though the jurisdiction and authority of the general government are essentially different form those of the State, they are not those of a different country; and the two, the State

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> and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interests of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals, and other buildings for public uses are constructed within the States. As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the States as would defeat or impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the Legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States.

Had the doctrine thus announced in Fort Leavenworth R.R. v. Lowe, supra, been known at the time of the Constitutional Convention, it is not improbable that article I, section 8, clause 17, at least insofar as it applies to areas other than the seat of government, would not have been adopted. Cession as a method for transfer of jurisdiction by a State to the United States is now well established, and quite possibly has been the method of transfer in the majority of instances in which the Federal

Federal reservation.--In Fort Leavenworth R.R. v. Lowe, supra, the Supreme Court approved second method not specified in the Constitution of securing legislative jurisdiction in

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the United States. Although the matter was not in issue in the case, the Supreme Court said (p. 526):

> The land constituting the Reservation was part of the territory acquired in 1803 by cession from France, and until the formation of the State of Kansas, and her admission into the Union, the United States possessed the rights of a proprietor, and had

> political dominion and sovereignty over it. For many years before that admission it had been reserved from sale by the proper authorities of the United States for military purposes, and occupied by them as a military post. The jurisdiction of the United States over it during this time was necessarily paramount. But in 1861 Kansas was admitted into the Union upon an equal footing with the original States, that is, with the same rights of political dominion and sovereignty, subject like them only to the Constitution of the United States. Congress might undoubtedly, upon such admission, have stipulated for retention of the political authority, dominion and legislative power of the United States over the Reservation, so long as it should be used for military purposes by the government; that is, it could have excepted the place from the jurisdiction of Kansas, as one needed for the uses of the general government. But from some cause, inadvertence perhaps, or over-confidence that a recession of such jurisdiction could be had whenever desired, no such stipulation or exception was made. * * * [Emphasis added.]

Almost the same language was used by the Supreme Court of Kansas in Clay v. State, 4 Kan. 49 (1866), and another suggestion of judicial recognition of this doctrine is to be found in an earlier case in the Supreme Court of the United States, Langford v. Monteith, 102 U.S. 145 (1880), in which it was held that when an act of congress admitting a State into the Union provides, in accordance with a treaty, that the lands of

an Indian tribe shall not be a part of such State or Territory, the new State government has no jurisdiction over them. The enabling acts governing the admission of several of the States provided that exclusive jurisdiction over certain areas was to be reserved to the United States. In view of these development, an earlier opinion of the United States Attorney General indicating that a State legislature, as distinguished from a State constitutional convention, had to give the consent to transfer jurisdiction specified in the Federal Constitution (12 Ops. A.G. (1868)), would seem inapplicable to a Federal reservation of jurisdiction.

Since Congress has the power to create States out of territories and to prescribe the boundaries of the new States, the retention of exclusive legislative jurisdiction over a federally owned area within the State is admitted into the Union would not appear to pose any serious constitutional difficulties.

No federal legislative jurisdiction without consent, cession, or reservation.--It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the State, subject to non-interference by the State with Federal functions, and subject to the free exercise by the Federal Government of rights

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with respect to the use, protection, and disposition of its property.

NECESSITY OF STATE ASSENT TO TRANSFER OF JURISDICTION TO FEDERAL GOVERNMENT: Constitutional consent.--The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State. Article I, section 8, clause 17, of the Constitution, provides that legislative jurisdiction may be transferred pursuant to its terms only with the consent of the legislature of the State in which is located the area subject to the jurisdictional transfer. As was indicated in chapter II, the consent requirement of article I, section 8, clause 17, was

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intended by the framers of the Constitution to preserve the States' jurisdictional integrity against Federal encroachment.

State cession or Federal reservation.--The transfer of legislative jurisdiction pursuant to either of the two means not spelled out in the Constitution likewise requires the assent of the State in which is located the area subject to the jurisdictional transfer. Where legislative jurisdiction is transferred pursuant to a State cession statute, the State has quite clearly assented to the transfer of legislative jurisdiction to the Federal Government, since the enactment of a State cession statute is a voluntary act on the part of the legislature of the State.

The second method not spelled out in the Constitution of vesting legislative jurisdiction in the Federal Government, namely, the reservation of legislative jurisdiction by the Federal Government at the time statehood is granted to a Territory, does not involve a transfer of legislative jurisdiction to the Federal Government by a State, since the latter never had jurisdiction over the area with respect to which legislative jurisdiction is reserved. While, under the second method of vesting legislative jurisdiction in the Federal Government, the latter may reserved such jurisdiction without inquiring as to the wishes or desires of the people of the Territory to which statehood has been granted, nevertheless, the people of the Territory involved have approved, in at least a technical sense, such reservation. Thus, the reservation of legislative jurisdiction constitutes, in the normal case, one of the terms and conditions for granting statehood, and only if all of the terms and conditions are approved by a majority of the Territorial legislature, is statehood granted.

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NECESSITY OF FEDERAL ASSENT: Express consent required by R. S. 355.--Acquiescence, or acceptance, by the Federal Government, as well as by the State, is essential to the transfer of legislative jurisdiction to the Federal Government. When legislative jurisdiction is reserved by the Federal Government at the time statehood is granted to a Territory, it is, of course, obvious that the possession of legislative jurisdiction meets with the approval of the Federal Government. When legislative jurisdiction is to be transferred by a State to the Federal Government either pursuant to article I, section 8, clause 17, of the Constitution, or by means of

CHAPTER V

CRIMINAL JURISDICTION

RIGHT OF DEFINING AND PUNISHING FOR CRIMES: Exclusive Federal jurisdiction.--Areas over which the Federal Government has acquired exclusive legislative jurisdiction are subject to the exclusive criminal jurisdiction of the United States. Bowen v. Johnston, 306 U.S.19 (1939); United States v. Watkins, 22 F.2d 437 (N.D.Cal 1927). That the States can neither define nor punish for crimes in such areas is made clear in the

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case of In re Ladd, 74 Fed. 31 (C.C.N.D.Neb., 1896), (p. 40):

> * * * The cession of jurisdiction over a given territory takes the latter from within, and places it without, the jurisdiction of the ceding sovereignty. After a state has parted with its political jurisdiction over a given tract of land, it cannot be said that acts done thereon are against the peace and dignity of the state, or are violations of its laws; and the state certainly cannot claim jurisdiction criminally be reason of acts done at place beyond,or not within, its territorial jurisdiction, unless by treaty or statute it may have retained jurisdiction over its own citizens, and even then the jurisdiction is only over the person as a citizen. * * *

The criminal jurisdiction of the Federal Government extends to private land over which legislative jurisdiction has been vested in the Government, as well as to federally owned lands. United States v. Unzenuta, supra; see also Petersen v. United States, 191 F.2d 154 (C.A. 9, 1951), cert.den., 342 U.S. 885. Indeed, the Federal Government's power derived from exclusive legislative jurisdiction over an area may extend beyond

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the boundaries of the area, as may be necessary to make exercise of the Government's jurisdiction effective; thus, the Federal Government may punish a person not in the exclusive jurisdiction area for concealment of his knowledge concerning the commission of a felony within the area. Cohens v. Virginia, 6 Wheat. 264, 426-429 (1821).

In Hollister v. United States, 145 Fed. 773 (C.A. 8, 1906), the court said (p. 777):

> Instances of relinquishment and acceptance of criminal jurisdiction by state Legislatures and the national Congress, respectively, over forts, arsenals, public buildings, and other

> property of the United States situated within the states, are common, and their legality has never, so far as we know, been questioned.

On the other hand, while the Federal Government has power under various provisions of the Constitution to define, and prohibit as criminal, certain acts or omissions occurring anywhere in the United States, it has no power to punish for various other crimes, jurisdiction over which is retained by the States under our Federal-State system of government, unless such crimes occur on areas as to which legislative jurisdiction has been vested in the Federal Government. The absence of jurisdiction in a State, or in the Federal Government, over a criminal act occurring in an area as to which only the other of these governments has legislative jurisdiction is demonstrated by the case of United States v. Tully, 140 Fed. 899 (C.C.D.Mont.,

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1905). Tully had been convicted by a State court in Montana of first degree murder, and sentenced to be hanged. The Supreme Court of the State reversed the conviction on the ground that the homicide had occurred on a military reservation over which exclusive jurisdiction was vested in the Federal Government. The defendant was promptly indicted in the Federal court, but went free as the result of a finding that the Federal Government did not have legislative jurisdiction over the particular land on which the homicide had occurred. The Federal court said (id. p. 905):

> It is unfortunate that a murderer should go unwhipped of justice, but it would be yet more unfortunate if any court should assume to try one charged with a crime without jurisdiction over the offense. In this case, in the light of the verdict of the jury in the state court, we may assume that justice would be done the defendant were he tried and convicted by any court and executed pursuant to its judgment. But in this court it would be the justice of the vigilance committee wholly without the pale of the law. The fact that the defendant is to be discharged may furnish a text for the thoughtless or uninformed to say that a murderer has been turned loose upon a technicality; but this is not a technicality. It goes to the very right to sit in judgment. * * * These sentiments no doubt appealed with equal force to the Supreme Court of Montana, and it is to its credit that it refused to lend its aid to the execution of one for the commission of an act which, in its judgment, was not cognizable under the laws of its state; but I cannot being myself to the conclusion reached by that able court, and it is upon the judgment and conscience of this court that the matter of jurisdiction here must be decided.

The United States and each State are in many respects separate sovereigns, and ordinarily one cannot enforce the laws of the other.

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> State and local police have no authority to enter an exclusive

U.S. Constitution: Thirteenth Amendment

Thirteenth Amendment - Slavery And Involuntary Servitude

Amendment Text | Annotations

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Annotations

- Abolition of Slavery
- Origin and Purpose
- Peonage
- Situations in Which the Amendment Is Inapplicable

Code **Sec. 1.1-1 Income tax on individuals.**

(a) General rule.

(1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual. For optional tax in the case of taxpayers with adjusted gross income of less than $10,000 (less than $5,000 for taxable years beginning before January 1, 1970) see section 3. The tax imposed is upon taxable income (determined by subtracting the allowable deductions from gross income). The tax is determined in accordance with the table contained in section 1. See subparagraph (2) of this paragraph for reference guides to the appropriate table for taxable years beginning on or after January 1, 1964, and before January 1, 1965, taxable years beginning after December 31, 1964, and before January 1, 1971, and taxable years beginning after December 31, 1970. In certain cases credits are allowed against the amount of the tax. See Part IV (section 31 and following), Subchapter A, Chapter 1 of the Code. In general, the tax is payable upon the basis of returns rendered by persons liable therefor (Subchapter A (sections 6001 and following), Chapter 61 of the Code) or at the source of the income by withholding. For the computation of tax in the case of a joint return of a husband and wife, or a return of a surviving spouse, for taxable years beginning before January 1, 1971, see section 2. The computation of tax in such a case for taxable years beginning after December 31, 1970, is determined in accordance with the table contained in section 1(a) as amended by the Tax Reform Act of 1969. For other rates of tax on individuals, see section 5(a). For the imposition of an additional tax for the calendar years 1968, 1969, and 1970, see section 51(a).

(2)

(i) For taxable years beginning on or after January 1, 1964, the tax imposed upon a single individual, a head of a household, a married individual filing a separate return, and estates and trusts is the tax imposed by section 1 determined in accordance with the appropriate table contained in the following subsection of section 1:

Taxable years beginning in 1964	Taxable years beginning after 1964 but before 1971	Taxable years beginning after Dec. 31, 1970 (references in this column are to the Code as amended by the Tax Reform Act of 1969)

Single individual	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(c).
Head of a household	Sec. 1(b)(1)	Sec. 1(b)(2)	Sec. 1(b).
Married individual filing a separate return	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(d).
Estates and trusts	Sec. 1(a)(1)	Sec. 1(a)(2)	Sec. 1(d).

(ii) For taxable years beginning after December 31, 1970, the tax imposed by section 1(d), as amended by the Tax Reform Act of 1969, shall apply to the income effectively connected with the conduct of a trade or business in the United States by a married alien individual who is a nonresident of the United States for all or part of the taxable year or by a foreign estate or trust. For such years the tax imposed by section 1(c), as amended by such Act, shall apply to the income effectively connected with the conduct of a trade or business in the United States by an unmarried alien individual (other than a surviving spouse) who is a nonresident of the United States for all or part of the taxable year. See paragraph (b)(2) of section 1.871-8.

(3) The income tax imposed by section 1 upon any amount of taxable income is computed by adding to the income tax for the bracket in which that amount falls in the appropriate table in section 1 the income tax upon the excess of that amount over the bottom of the bracket at the rate indicated in such table.

(4) The provisions of section 1 of the Code, as amended by the Tax Reform Act of 1969, and of this paragraph may be illustrated by the following examples:

Example 1.

A, an unmarried individual, had taxable income for the calendar year 1964 of $15,750. Accordingly, the tax upon such taxable income would be $4,507.50, computed as follows from the table in section 1(a)(1):

Tax on $14,000 (from table)	$3,790.00

Tax on $1,750 (at 41 percent as determined from the table)	717.50
Total tax on $15,750	4,507.50

Example 2.

Assume the same facts as in example (1), except the figures are for the calendar year 1965. The tax upon such taxable income would be $4,232.50, computed as follows from the table in section 1(a)(2):

Tax on $14,000 (from table)	$3,550.00
Tax on $1,750 (at 39 percent as determined from the table)	682.50
Total tax on $15,750	4,232.50

Example 3.

Assume the same facts as in example (1), except the figures are for the calendar year 1971. The tax upon such taxable income would be $3,752.50, computed as follows from the table in section 1(c), as amended:

Tax on $14,000 (from table)	$3,210.00
Tax on $1,750 (at 31 percent as determined from the table)	542.50
Total tax on $15,750	3,752.50

(b) Citizens or residents of the United States liable to tax.

In general, all citizens of the United States, wherever resident, and all resident alien individuals are

liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. Pursuant to section 876, a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, except as provided in section 933 with respect to Puerto Rican source income, subject to taxation in the same manner as a resident alien individual. As to tax on nonresident alien individuals, see sections 871 and 877.

(c) Who is a citizen.

Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship, see Chapters 1 and 2 of Title III of the Immigration and Nationality Act (8 U.S.C. 1401-1459). For rules governing loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481-1489), Schneider v. Rusk, (1964) 377 U.S. 163, and Rev. Rul. 70-506, C.B. 1970-2, 1. For rules pertaining to persons who are nationals but not citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. 1408). For special rules applicable to certain expatriates who have lost citizenship with a principal purpose of avoiding certain taxes, see section 877. A foreigner who has filed his declaration of intention of becoming a citizen but who has not yet been admitted to citizenship by a final order of a naturalization court is an alien.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 7332, 39 FR 44216, Dec. 23, 1974]

Code **Sec. 31.3401(c)-1 Employee.**

(a) The term EMPLOYEE includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily

present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(f) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(g) The term EMPLOYEE includes every individual who receives a supplemental unemployment compensation benefit which is treated under paragraph (b)(14) of Section 31.3401(a)-1 as if it were wages.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401(a).

[T.D. 6516, 25 FR 13096, Dec. 20, 1960, as amended by T.D. 7068, 35 FR 17329, Nov. 11, 1970]

Sec. 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(a) Processing of returns.

When the returns are filed in the office of the district director of internal revenue or the office of the director of a regional service center, they are checked first for form, execution, and mathematical accuracy. Mathematical errors are corrected and a correction notice of any such error is sent to the taxpayer. Notice and demand is made for the payment of any additional tax so resulting, or refund is made of any overpayment. Returns are classified for examination at regional service centers. Certain individual income tax returns with potential unallowable items are delivered to Examination Divisions at regional service centers for correction by correspondence. Otherwise, returns with the highest examination potential are delivered to district Examinations Divisions based on workload capacities. Those most in need of examination are selected for office or field examination.

(b) Examination of returns - (1) General. The original examination of income (including partnership and fiduciary), estate, gift, excise, employment, exempt organization, and information returns is a primary function of examiners in the Examination Division of the office of each district director of internal revenue. Such examiners are organized in groups, each of which is under the immediate supervision of a group supervisor designated by the district director. Revenue agents (and such other officers or employees of the Internal Revenue Service as may be designated for this purpose by the Commissioner) are authorized to examine any books, papers, records, or memoranda bearing upon matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths. See section 7602 of the Code and the regulations thereunder. There are two general types of examination. These are commonly called 'office examination' and 'field examination'. During the examination of a return a taxpayer may be represented before the examiner by an attorney, certified public accountant, or other representative. See Subpart E of this part for conference and practice requirements.

(2) Office examination - (i) Adjustments by Examination Division at service center. Certain individual income tax returns identified as containing potential unallowable items are examined by Examination Divisions at regional service centers. Correspondence examination techniques are used. If the taxpayer requests an interview to discuss the proposed adjustments, the case is transferred to the taxpayer's district office. If the taxpayer does not agree to proposed adjustments, regular appellate procedures apply.

(ii) Examinations at district office. Certain returns are examined at district offices by office examination techniques. These returns include some business returns, besides the full range of nonbusiness individual income tax returns. Office examinations are conducted primarily by the interview method. Examinations are conducted by correspondence only when warranted by the nature of the questionable items and by the

convenience and characteristics of the taxpayer. In a correspondence examination, the taxpayer is asked to explain or send supporting evidence by mail. In an office interview examination, the taxpayer is asked to come to the district director's office for an interview and to bring certain records in support of the return. During the interview examination, the taxpayer has the right to point out to the examiner any amounts included in the return which are not taxable, or any deductions which the taxpayer failed to claim on the return. If it develops that a field examination is necessary, the examiner may conduct such examination.

(3) Field examination. Certain returns are examined by field examination which involves an examination of the taxpayer's books and records on the taxpayer's premises. An examiner will check the entire return filed by the taxpayer and will examine all books, papers, records, and memoranda dealing with matters required to be included in the return. If the return presents an engineering or appraisal problem (e.g., depreciation or depletion deductions, gains or losses upon the sale or exchange of property, or losses on account of abandonment, exhaustion, or obsolescence), it may be investigated by an engineer agent who makes a separate report.

(4) Conclusion of examination. At the conclusion of an office or field examination, the taxpayer is given an opportunity to agree with the findings of the examiner. If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights. If the taxpayer does agree with the proposed changes, the examiner will invite the taxpayer to execute either Form 870 or another appropriate agreement form. When the taxpayer agrees with the proposed changes but does not offer to pay any deficiency or additional tax which may be due, the examiner will also invite payment (by check or money order), together with any applicable interest or penalty. If the agreed case involves income, profits, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes, the agreement is evidenced by a waiver by the taxpayer of restrictions on assessment and collection of the deficiency, or an acceptance of a proposed overassessment. If the case involves excise or employment taxes or 100 percent penalty, the agreement is evidenced in the form of a consent to assessment and collection of additional tax or penalty and waiver of right to file claim for abatement, or the acceptance of the proposed overassessment. Even though the taxpayer signs an acceptance of a proposed overassessment the district director or the director of the regional service center remains free to assess a deficiency. On the other hand, the taxpayer who has given a waiver may still claim a refund of any part of the deficiency assessed against, and paid by, the taxpayer, or any part of the tax originally assessed and paid by the taxpayer. The taxpayer's acceptance of an agreed overassessment does not prevent the taxpayer from filing a claim and bringing a suit for an additional sum, nor does it preclude the Government from maintaining suit to recover an

erroneous refund. As a matter of practice, however, waivers or acceptances ordinarily result in the closing of a case insofar as the Government is concerned.

(5) Technical advice from the National Office - (i) Definition and nature of technical advice. (a) As used in this subparagraph, 'technical advice' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of a district office in connection with the examination of a taxpayer's return or consideration of a taxpayer's return claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

(b) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the examination or consideration of a return of the taxpayer. Thus, a district director may, in his discretion, request technical advice with respect to the consideration of a request for a determination letter.

(c) If a district director is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked, and requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice and the procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the district director's recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the district director should inform the taxpayer of his opinion that the ruling letter should be revoked. The district director, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(d) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws other than those which are under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. This authority has been largely redelegated to subordinate officials.

(e) The provisions of this subparagraph apply only to a case under the jurisdiction of a district director but do not apply to an Employee Plans case under the jurisdiction of a key district director as provided in Sec. 601.201(o) or to an Exempt Organization case under the jurisdiction of a key

district director as provided in Sec. 601.201(n). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). The provisions of this subparagraph do not apply to a case under the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms. They also do not apply to a case under the jurisdiction of an Appeals office, including a case previously considered by Appeals. The technical advice provisions applicable to a case under the jurisdiction of an Appeals office, other than Employee Plans and Exempt Organizations cases, are set forth in Sec. 601.106(f)(10). A case remains under the jurisdiction of the district director even though an Appeals office has the identical issue under consideration in the case of another taxpayer (not related within the meaning of section 267 of the Code) in an entirely different transaction. Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a Form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(ii) Areas in which technical advice may be requested. (a) District directors may request technical advice on any technical or procedural question that develops during the audit or examination of a return, or claim for refund or credit, of a taxpayer. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) District directors are encouraged to request technical advice on any technical or procedural question arising in connection with any case of the type described in subdivision (i) of this subparagraph, which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office. This request should be made at the earliest possible stage of the examination process.

(iii) Requesting technical advice. (a) It is the responsibility of the district office to determine whether technical advice is to be requested on any issue before that office. However, while the case is under the jurisdiction of the district director, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. This request should be made at the earliest possible stage of the examination process. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the

taxpayer's request, the examiner is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advise the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the examiner declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (g) of this subdivision. If the examiner initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice submitted by the district director should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions from the district office, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. Every effort should be made to reach agreement as to the facts and specific point at issue. If agreement cannot be reached, the taxpayer may submit, within 10 calendar days after receipt of notice from the district office, a statement of his understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(d) If the taxpayer initiates the action to request advice, and his statement of the facts and point or points at issue are not wholly acceptable to the district officials, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to the district official's letter. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division. If agreement cannot be reached, both the statements of the taxpayer and the district official will be forwarded to the National Office.

(e)(1) In the case of requests for technical advice the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever applicable (relating to agreement by the taxpayer with the statement of facts submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be informed by the district director that such a statement is required. If the district director does not receive the statement within 10 days after the taxpayer has been informed of the need for such statement, the district director may decline to submit the request for technical advice. If the district director decides to

request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(2) The requirements included in Sec. 601.105(b)(5) with respect to submissions of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests made by the district director before November 1, 1976, or requests for any document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions, required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis, under section 6110(c) of the Code, for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, the taxpayer may submit a statement explaining the taxpayer's position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, the taxpayer will also be informed of the taxpayer's right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether such a conference is desired.

(i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the

technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments or other material in support of the position that such material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 611(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice. (a) If the taxpayer has requested referral of an issue before a district office to the National Office for technical advice, and after consideration of the request the examiner is of the opinion that the circumstances do not warrant such referral, he will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the examining officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why he believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Examination Division.

(c) The examining officer will submit the statement of the taxpayer through channels to the Chief, Examination Division, accompanied by a statement of his reasons why the issue should not be referred to the National Office. The Chief, Examination Division, will determine, on the basis of the

statements submitted, whether technical advice will be requested. If he determines that technical advice is not warranted, he will inform the taxpayer in writing that he proposes to deny the request. In the letter to the taxpayer the Chief, Examination Division, will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief, Examination Division, whether he agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Examination Division, not to request technical advice from the National Office. However, if he does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Examination Division, for review. After review in the National Office, the district office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the district office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

> (v) Conference in the National Office. (a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the examining officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or his representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no 'right' of

appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or his representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate district director. The district director will be requested to give the matter his prompt attention. He may verify the additional facts and data and comment upon it to the extent he deems it appropriate.

(e) A taxpayer or a taxpayer's representative desiring to obtain information as to the status of the case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Official	Telephone numbers, (Area Code 202)
Director Corporation Tax Division,	566-4504 or 566-4505.
Director, Individual Tax Division	566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office. (a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivisions (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the district director and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the 'Technical Advice Memorandum') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the district office. The discussion of the issues will be in such detail that the district officials are apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110 (d) of the Code) which the district director shall forward to the taxpayer at such time that the district director furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subsection.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the district office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the district director. However, in the case of technical advice memoranda described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical

advice memorandum shall not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum, if the taxpayer desires to protest the disclosure of certain information in the technical advice memorandum, the taxpayer must within 20 days after the notice is mailed submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally the Internal Revenue Service will not consider the deletion under this subparagraph of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the district director, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion with respect to the deletions to be made.

(vii) Action on technical advice in district offices. (a) Unless the district director feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and promptly requests such reconsideration, his office will proceed to process the taxpayer's case on the basis of the conclusions expressed in the technical advice memorandum.

(b) The district director will furnish to the taxpayer a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memoranda involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the district director that he should not furnish a copy of the technical memorandum to the taxpayer, the district director will so inform the taxpayer if he requests a copy.

(viii) Effect of technical advice. (a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and

precedents to the facts of a specific case, and is issued primarily as a means of assisting district officials in the examination and closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 01.201(1) (7) and 601.201(1) (8).

(c) Technical advice memoranda often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Sec. 01.601(d)(2)(i)(a) and 601.601(d) (2) (v).

(d) A district director may raise an issue in any taxable period, even though he or she may have asked for and been furnished technical advice with regard to the same or a similar issue in any other taxable period.

(c) District procedure-(1) Office examination. (i) In a correspondence examination the taxpayer is furnished with a report of the examiner's findings by a form letter. The taxpayer is asked to sign and return an agreement if the taxpayer accepts the findings. The letter also provides a detailed explanation of the alternatives available if the taxpayer does not accept the findings, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An Appeals office conference will be granted to the taxpayer upon request without submission of a written protest.

(ii) If, at the conclusion of an office interview examination, the taxpayer does not agree with the adjustments proposed, the examiner will fully explain the alternatives available which include, if practicable, an immediate interview with a supervisor or an immediate conference with an Appeals Officer. If an immediate interview or Appeals office conference is not practicable, or is not requested by the taxpayer, the examination report will be mailed to the taxpayer under cover of an appropriate transmittal letter. This letter provides a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requests the taxpayer to inform the district director, within the specified period, of the choice of action. An appeals office

conference will be granted to the taxpayer upon request without submission of a written protest.

(2) Field examination. (i) If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed, the examiner will prepare a complete examination report fully explaining all proposed adjustments. Before the report is sent to the taxpayer, the case file will be submitted to the district Centralized Services and, in some cases, Quality Review function for appropriate review. Following such review, the taxpayer will be sent a copy of the examination report under cover of a transmittal (30-day) letter, providing a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requesting the taxpayer to inform the district director, within the specified period, of the choice of action.

(ii) If the total amount of proposed additional tax, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) does not exceed $2,500 for any taxable period, the taxpayer will be granted an Appeals office conference on request. A written protest is not required.

(iii) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a brief written statement of disputed issues is submitted.

(iv) If for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000, the taxpayer, on request, will be granted an Appeals office conference, provided a written protest is filed.

(d) Thirty-day letters and protests - (1) General. The report of the examiner, as approved after review, recommends one of four determinations:

(i) Acceptance of the return as filed and closing of the case;

(ii) Assertion of a given deficiency or additional tax;

(iii) Allowance of a given overassessment, with or without a claim for refund, credit, or

abatement;

(iv) Denial of a claim for refund, credit, or abatement which has been filed and is found wholly lacking in merit. When a return is accepted as filed (as in subdivision (i) of this subparagraph), the taxpayer is notified by appropriate 'no change' letter. In an unagreed case, the district director sends to the taxpayer a preliminary or '30-day letter' if any one of the last three determinations is made (except a full allowance of a claim in respect of any tax). The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examiner's report explaining the basis of the proposed determination. It suggests to the taxpayer that if the taxpayer concurs in the recommendation, he or she indicate agreement by executing and returning a waiver or acceptance. The preliminary letter also informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination. If the taxpayer does not respond to the letter within 30 days, a statutory notice of deficiency will be issued or other appropriate action taken, such as the issuance of a notice of adjustment, the denial of a claim in income, profits, estate, and gift tax cases, or an appropriate adjustment of the tax liability or denial of a claim in excise and employment tax cases.

(2) Protests. (i) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in office interview and correspondence examination cases.

(ii) No written protest or brief written statement of disputed issues is required to obtain an Appeals office conference in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period.

(iii) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $10,000 for any taxable period.

(iv) A written protest is optional (although a brief written statement of disputed issues is required) to obtain Appeals consideration in a field examination case if for any taxable period the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but

does not exceed $10,000.

(v) Instructions for preparation of written protests are sent to the taxpayer with the transmittal (30-day) letter.

(e) Claims for refund or credit. (1) After payment of the tax a taxpayer may (unless he has executed an agreement to the contrary) contest the assessment by filing a claim for refund or credit for all or any part of the amount paid, except as provided in section 6512 of the Code with respect to certain taxes determined by the Tax Court, the decision of which has become final. A claim for refund or credit of income taxes shall be made on Form 1040X, 1120X, or an amended income tax return, in accordance with Sec. 301.6402-3. In the case of taxes other than income taxes, a claim for refund or credit shall be made on Form 843. The appropriate forms are obtainable from district directors or directors of service centers. Generally, the claim, together with appropriate supporting evidence, must be filed at the location prescribed in Sec. 301.6402-2(a) (2). A claim for refund or credit must be filed within the applicable statutory period of limitation. In certain cases, a properly executed income tax return may operate as a claim for refund or credit of the amount of the overpayment disclosed by such return. (See Sec. 301.6402-3).

(2) When claims for refund or credit are examined by the Examination Division, substantially the same procedure is followed (including appeal rights afforded to taxpayers) as when taxpayers' returns are originally examined. But see Sec. 601.108 for procedure for reviewing proposed overpayment exceeding $200,000 of income, estate, and gift taxes.

(3) As to suits for refund, see Sec. 601.103 (c).

(4) (Reserved)

(5) There is also a special procedure applicable to applications for tentative carryback adjustments under section 6411 of the Code (consult Forms 1045 and 1139).

(6) For special procedure applicable to claims for payment or credit in respect of gasoline used on a farm for farming purposes, for certain nonhighway purposes, for use in commercial aircraft, or used by local transit systems, see sections 39, 6420, and 6421 of the Code and Sec. 601.402(c)(3). For special procedure applicable to claims for payment or credit in respect of lubricating oil used otherwise than in a highway motor vehicle, see sections 39 and 6424 of the Code and Sec. 601.402(c)(3). For special procedure applicable for credit or refund of aircraft use tax, see section 6426 of the Code and Sec. 601.402(c)(4). For special procedure applicable for payment or credit in respect of special fuels not used for taxable purposes, see sections 39 and 6427 of the Code and Sec. 601.402(c)(5).

(7) For special procedure applicable in certain cases to adjustment of overpayment of estimated tax by a corporation see section 6425 of the Code.

(f) Interruption of examination procedure. The process of field examination and the course of the administrative procedure described in this section and in the following section may be interrupted in some cases by the imminent expiration of the statutory period of limitations for assessment of the tax. To protect the Government's interests in such a case, the district director of internal revenue or other designated officer may be required to dispatch a statutory notice of deficiency (if the case is within jurisdiction of U.S. Tax Court), or take other appropriate action to assess the tax, even though the case may be in examination status. In order to avoid interruption of the established procedure (except in estate tax cases), it is suggested to the taxpayer that he execute an agreement on Form 872 (or such other form as may be prescribed for this purpose). To be effective this agreement must be entered into by the taxpayer and the district director or other appropriate officer concerned prior to the expiration of the time otherwise provided for assessment. Such a consent extends the period for assessment of any deficiency, or any additional or delinquent tax, and extends the period during which the taxpayer may claim a refund or credit to a date 6 months after the agreed time of extension of the assessment period. When appropriate, a consent may be entered into restricted to certain issues.

(g) Fraud. The procedure described in this section does not apply in any case in which criminal prosecution is under consideration. Such procedure does obtain, however, in cases involving the assertion of the civil fraud penalty after the criminal aspects of the case have been closed.

(h) Jeopardy assessments. If the district director believes that the assessment or collection of a tax will be jeorpardized by delay, he/she is authorized and required to assess the tax immediately, together with interest and other additional amounts provided by law, notwithstanding the restrictions on assessment or collection of income, estate, gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 taxes contained in section 6213(a) of the Code. A jeopardy assessment does not deprive the taxpayer of the right to file a petition with the Tax Court. Collection of a tax in jeopardy may be immediately enforced by the district director upon notice and demand. To stay collection, the taxpayer may file with the district director a bond equal to the amount for which the stay is desired. The taxpayer may request a review in the Appeals office of whether the making of the assessment was reasonable under the circumstances and whether the amount assessed or demanded was appropriate under the circumstances. See section 7429. This request shall be made, in writing, within 30 days after the earlier of -

(1) The day on which the taxpayer is furnished the written statement described in section

7429(a)(1); or

(2) The last day of the period within which this statement is required to be furnished. An Appeals office conference will be granted as soon as possible and a decision rendered without delay.

(i) Regional post review of examined cases. Regional Commissioners review samples of examined cases closed in their district offices to insure uniformity throughout their districts in applying Code provisions, regulations, and rulings, as well as the general policies of the Service.

(j) Reopening of Cases Closed After Examination. (1) The Service does not reopen any case closed after examination by a district office or service center, to make an adjustment unfavorable to the taxpayer unless:

(i) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact; or

(ii) The prior closing involved a clearly defined substantial error based on an established Service position existing at the time of the previous examination; or

(iii) Other circumstances exist which indicate failure to reopen would be a serious administrative omission.

(2) All reopenings are approved by the Chief, Examination Division (District Director in streamlined districts), or by the Chief, Compliance Division, for cases under his/her jurisdiction. If an additional inspection of the taxpayer's books of account is necessary, the notice to the taxpayer required by Code section 7605(b) will be delivered to the taxpayer at the time the reexamination is begun.

(k) Transfer of returns between districts. When request is received to transfer returns to another district for examination or the closing of a cased, the district director having jurisdiction may transfer the case, together with pertinent records to the district director of such other district. The Service will determine the time and place of the examination. In determining whether a transfer should be made, circumstances such as the following will be considered:

(1) Change of the taxpayer's domicile, either before or during examination.

(2) Discovery that taxpayer's books and records are kept in another district.

(3) Change of domicile of an executor or administrator to another district before or during

examination.

(4) The effective administration of the tax laws.

(l) Special procedures for crude oil windfall profit tax cases. For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405. (5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

Sec. 601.106 Appeals functions.

(a) General.

(1)

(i) There are provided in each region Appeals offices with office facilities within the region.

Unless they otherwise specify, taxpayers living outside the United States use the facilities of the Washington, D.C., Appeals Office of the the Mid-Atlantic Region. Subject to the limitations set forth in subparagraphs (2) and (3) of this paragraph, the Commissioner has delegated to certain officers of the Appeals offices authority to represent the regional commissioner in those matters set forth in subdivisions (ii) through (v) of this subparagraph. If a statutory notice of deficiency was issued by a district director or the Director, Foreign Operations District, the Appeals office may waive jurisdiction to the director who issued the statutory notice during the 90-day (or 150-day) period for filing a petition with the Tax Court, except where criminal prosecution has been recommended and not finally disposed of, or the statutory notice includes the ad valorem fraud penalty. After the filing of a petition in the Tax Court, the Appeals office will have exclusive settlement jurisdiction, subject to the provisions of subparagraph (2) of this paragraph, for a period of 4 months (but no later than the receipt of the trial calendar in regular cases and no later than 15 days before the calendar call in S cases), over cases docketed in the Tax Court. Subject to the exceptions and limitations set forth in subparagraph (2) of this paragraph, there is also vested in the Appeals offices authority to represent the regional commissioner in his/her exclusive authority to settle (a) all cases docketed in the Tax Court and designated for trial at any place within the territory comprising the region, and (b) all docketed cases originating in the office of any district director situated within the region, or in which jurisdiction has been transferred to

the region, which are designated for trial at Washington, D.C., unless the petitioner resides in, and his/her books and records are located or can be made available in, the region which includes Washington, D.C.

(ii) Certain officers of the Appeals offices may represent the regional commissioner in his/her exclusive and final authority for the determination of -

(a) Federal income, profits, estate (including extensions for payment under section 6161(a)(2)), gift, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability (whether before or after the issuance of a statutory notice of deficiency);

(b) Employment or certain Federal excise tax liability; and

(c) Liability for additions to the tax, additional amounts, and assessable penalties provided under Chapter 68 of the Code, in any case originating in the office of any district director situated in the region, or in any case in which jurisdiction has been transferred to the region.

(iii) The taxpayer must request Appeals consideration.

(a) An oral request is sufficient to obtain Appeals consideration in (1) all office interview or correspondence examination cases or (2) a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) is $2,500 or less for any taxable period. No written protest or brief statement of disputed issues is required.

(b) A brief written statement of disputed issues is required (a written protest is optional) to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be compromised) exceeds $2,500 but does not exceed $10,000 for any taxable period.

(c) A written protest is required to obtain Appeals consideration in a field examination case if the total amount of proposed additional tax including penalties, proposed overassessment, or claimed refund (or, in an offer in compromise, the total amount of assessed tax, penalty, and interest sought to be

compromised) exceeds $10,000 for any taxable period.

(d) A written protest is required to obtain Appeals consideration in all employee plan and exempt organization cases.

(e) A written protest is required to obtain Appeals consideration in all partnership and S corporation cases.

(iv) Sections 6659(a)(1) and 6671(a) provide that additions to the tax, additional amounts, penalties and liabilities (collectively referred to in this subdivision as 'penalties') provided by Chapter 68 of the Code shall be paid upon notice and demand and shall be assessed and collected in the same manner as taxes. Certain Chapter 68 penalties may be appealed after assessment to the Appeals office. This post-assessment appeal procedure applies to all but the following cCapter 68 penalties:

(a) Penalties that are not subject to a reasonable cause or reasonable basis determination (examples are additions to the tax for failure to pay estimated income tax under sections 6654 and 6655);

(b) Penalties that are subject to the deficiency procedures of subchapter B of Chapter 63 of the Code (because the taxpayer has the right to appeal such penalties, such as those provided under section 6653 (a) and (b), prior to assessment):

(c) Penalties that are subject to an administratively granted preassessment appeal procedure such as that provided in Sec. 1.6694-2(a)(1) because taxpayers are able to protest such penalties prior to assessment;

(d) The penalty provided in section 6700 for promoting abusive tax shelters (because the penalty is subject to the procedural rules of section 6703 which provides for an extension of the period of collection of the penalty when a person pays not less than 15 percent of the amount of such penalty); and

(e) The 100 percent penalty provided under section 6672 (because the taxpayer has the opportunity to appeal this penalty prior to assessment). The appeal may be made before or after payment, but shall be made before the filing of a claim for refund. Technical advice procedures are not applicable to an appeal made under this subdivision.

(v) The Appeals office considers cases involving the initial or continuing recognition of

tax exemption and foundation classification. See Sec. 601.201(n)(5) and (n)(6). The Appeals office also considers cases involving the initial or continuing determination of employee plan qualification under Subchapter D of Chapter 1 of the Code. See Sec. 601.201(o)(6). However, the jurisdiction of the Appeals office in these cases is limited as follows:

(a) In cases under the jurisdiction of a key district director (or the National Office) which involve an application for, or the revocation or modification of, the recognition of exemption or the determination of qualification, if the determination concerning exemption is made by a National Office ruling, or if National Office technical advice is furnished concerning exemption or qualification, the decision of the National Office is final. The organization/plan has no right of appeal to the Appeals office or any other avenue of administrative appeal. See Sec. 601.201(n)(i), (n)(6)(ii)(b), (n)(9)(viii)(a), (o)(2)(iii), and (o)(6)(i).

(b) In cases already under the jurisdiction of an Appeals office, if the proposed disposition by that office is contrary to a National Office ruling concerning exemption, or to a National Office technical advice concerning exemption or qualification, issued prior to the case, the proposed disposition will be submitted, through the Office of the Regional Director of Appeals, to the Assistant Commissioner (Employee Plans and Exempt Organizations) or, in section 521 cases, to the Assistant Commissioner (Technical). The decision of the Assistant Commissioner will be followed by the Appeals office. See Sec. 601.201(n)(5)(iii), (n)(6)(ii)(d), (n)(6)(iv), and (o)(6)(iii).

(2) The authority described in subparagraph (1) of this paragraph does not include the authority to:

(i) Negotiate or make a settlement in any case docketed in the Tax Court if the notice of deficiency, liability or other determination was issued by Appeals officials;

(ii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or other determination was issued after appeals consideration of all petitioned issues by the Employee Plans/Exempt Organizations function;

(iii) Negotiate or make a settlement in any docketed case if the notice of deficiency, liability or final adverse determination letter was issued by a District Director and is based upon a National Office ruling or National Office technical advice in that case

involving a qualification of an employee plan or tax exemption and/or foundation status of an organization (but only to the extent the case involves such issue);

(iv) Negotiate or make a settlement if the case was docketed under Code sections 6110, 7477, or 7478;

(v) Eliminate the ad valorem fraud penalty in any case in which the penalty was determined by the district office or service center office in connection with a tax year or period, or which is related to or affects such year or period, for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, except upon the recommendation or concurrence of Counsel; or

(vi) Act in any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel.

(3) The authority vested in Appeals does not extend to the determination of liability for any excise tax imposed by Subtitle E or by Subchapter D of chapter 78, to the extent it relates to Subtitle E.

(4) In cases under Appeals jurisdiction, the Appeals official has the authority to make and subscribe to a return under the provisions of section 6020 of the Code where taxpayer fails to make a required return.

(b) Initiation of proceedings before Appeals.

In any case in which the district director has issued a preliminary or '30-day letter' and the taxpayer requests Appeals consideration and files a written protest when required (see paragraph (c)(1) of Sec. 01.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization. However, the appeal procedures do not extend to cases involving solely the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds. Organizations such as labor unions and trade associations which have been examined by the district director to determine the amounts expended by the organization for purposes of lobbying, promotion or defeat of legislation, political campaigns, or propaganda related to those purposes are treated as 'taxpayers' for the purpose of this right of administrative appeal. Thus, upon requesting appellate consideration and filing a written protest, when required, to

the district director's findings that a portion of member dues is to be disallowed as a deduction to each member because expended for such purposes, the organization will be afforded full rights of administrative appeal to the Appeals activity similar to those rights afforded to taxpayers generally. After review of any required written protest by the district director, the case and its administrative record are referred to Appeals. Appeals may refuse to accept a protested nondocketed case where preliminary review indicates it requires further consideration or development. No taxpayer is required to submit a case to Appeals for consideration. Appeal is at the option of the taxpayer. After the issuance by the district director of a statutory notice of deficiency, upon the taxpayer's request, Appeals may take up the case for settlement and may grant the taxpayer a conference thereon.

(c) Nature of proceedings before Appeals.

Proceedings before Appeals are informal. Testimony under oath is not taken, although matters alleged as facts may be required to be submitted in the form of affidavits, or declared to be true under the penalties of perjury. Taxpayers may represent themselves or designate a qualified representative to act for them. See Subpart E of this part for conference and practice requirements. At any conference granted by Appeals on a nondocketed case, the district director will be represented if the Appeals official having settlement authority and the district director deem it advisable. At any such conference on a case involving the ad valorem fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return, the District Counsel will be represented if he or she so desires.

(d) Disposition and settlement of cases before Appeals.

(1) In general.

During consideration of a case, the Appeals office should neither reopen an issue as to which the taxpayer and the office of the district director are in agreement nor raise a new issue, unless the ground for such action is a substantial one and the potential effect upon the tax liability is material. If the Appeals raises a new issue, the taxpayer or the taxpayer's representative should be so advised and offered an opportunity for discussion prior to the taking of any formal action, such as the issuance of a statutory notice of deficiency.

(2) Cases not docketed in the Tax Court.

(i) If after consideration of the case by Appeals a satisfactory settlement of some or all the issues is reached with the taxpayer, the taxpayer will be requested to sign Form

870-AD or other appropriate agreement form waiving restrictions on the assessment and collection of any deficiency and accepting any overassessment resulting under the agreed settlement. In addition, in partially unagreed cases, a statutory notice of deficiency will be prepared and issued in accordance with subdivision (ii) of this subparagraph with respect to the unagreed issue or issues.

(ii) If after consideration of the case by Appeals it is determined that there is a deficiency in income, profits, estate, gift tax, generation-skipping transfer, or Chapter 41, 42, 43, or 44 tax liability to which the taxpayer does not agree, a statutory notice of deficiency will be prepared and issued by Appeals. Officers of the Appeals office having authority for the administrative determination of tax liabilities referred to in paragraph (a) of this section are also authorized to prepare, sign on behalf of the Commissioner, and send to the taxpayer by registered or certified mail any statutory notice of deficiency prescribed in sections 6212 and 6861 of the Code, and in corresponding provisions of the Internal Revenue Code of 1939. Within 90 days, or 150 days if the notice is addressed to a person outside of the States of the Union and the District of Columbia, after such a statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the U.S. Tax Court for a redetermination of the deficiency. In addition, if a claim for refund is disallowed in full or in part by the Appelate Division and the taxpayer does not sign Form 2297, Appeals will prepare the statutory notice of claim disallowance and send it to the taxpayer by certified mail (or registered mail if the taxpayer is outside the United States), with a carbon copy to the taxpayer's representative by regular mail, if appropriate. In any other unagreed case, the case and its administrative file will be forwarded to the appropriate function with directions to take action with respect to the tax liability determined in Appeals. Administrative appeal procedures will apply to 100-percent penalty cases, except where an assessment is made because of Chief Counsel's request to support a third-party action in a pending refund suit. See Rev. Proc. 69-26.

(iii) Taxpayers desiring to further contest unagreed excise (other than those under Chapters 41 through 44 of the Code) and employment tax cases and 100-percent penalty cases must pay the additional tax (or portion thereof of divisible taxes) when assessed, file claim for refund within the applicable statutory period of limitations (ordinarily 3 years from time return was required to be filed or 2 years from payment, whichever expires later), and upon disallowance of claim or after 6 months from date claim was filed, file suit in U.S. District Court or U.S. Claims Court. Suits for refund of

taxes paid are under the jurisdiction of the Department of Justice.

(3) Cases docketed in the Tax Court.

(i) If the case under consideration in Appeals is docketed in the Tax Court and agreement is reached with the taxpayer with respect to the issues involved, the disposition of the case is effected by a stipulation of agreed deficiency or overpayment to be filed with the Tax Court and in conformity with which the Court will enter its order.

(ii) If the case under consideration in Appeals is docketed in the Tax Court and the issues remain unsettled after consideration and conference in Appeals, the case will be referred to the appropriate district counsel for the region for defense of the tax liability determined.

(iii) If the deficiency notice in a case docketed in the Tax Court was not issued by the Appeals office and no recommendation for criminal prosecution is pending, the case will be referred by the district counsel to the Appeals office for settlement as soon as it is at issue in the Tax Court. The settlement procedure shall be governed by the following rules:

(a) The Appeals office will have exclusive settlement jurisdiction for a period of 4 months over certain cases docketed in the Tax Court. The 4-month period will commence at the time Appeals receives the case from Counsel, which will be after the case is at issue. Appeals will arrange settlement conferences in such cases within 45 days of receipt of the case. In the event of a settlement, Appeals will prepare and forward to Counsel the necessary computations and any stipulation decisions secured. Counsel will prepare any needed settlement documents for execution by the parties and filing with the Tax Court. Appeals will also have authority to settle less than all the issues in the case and to refer the unsettled issues to Counsel for disposition. In the event of a partial settlement, Appeals will inform Counsel of the agreement of the petitioner(s) and Appeals may secure and forward to Counsel a stipulation covering the agreed issues. Counsel will, if necessary, prepare documents reflecting settlement of the agreed issues for execution by the parties and filing with the Tax Court at the appropriate time.

(b) At the end of the 4-month period, or before that time if Appeals determines the case is not susceptible of settlement, the case will be returned to Counsel.

Thereafter, Counsel will have exclusive authority to dispose of the case. If, at the end of the 4-month period, there is substantial likelihood that a settlement of the entire case can be effected in a reasonable period of time, Counsel may extend Appeals settlement jurisdiction for a period not to exceed 60 days, but not beyond the date of the receipt of a trial calendar upon which the case appears. Extensions beyond the 50-day period or after the event indicated will be granted only with the personal approval of regional counsel and will be made only in those cases in which the probability of settlement of the case in its entirety by Appeals clearly outweighs the need to commence trial preparation.

(c) During the period of Appeals jurisdiction, Appeals will make available such files and information as may be necessary for Counsel to take any action required by the Court or which is in the best interests of the Government. When a case is referred by Counsel to Appeals, Counsel may indicate areas of needed factual development or areas of possible technical uncertainties. In referring a case to Counsel, Appeals will furnish its summary of the facts and the pertinent legal authorities.

(d) The Appeals office may specify that proposed Counsel settlements be referred back to Appeals for its views. Appeals may protest the proposed Counsel settlements. If Counsel disagrees with Appeals, the Regional Counsel will determine the disposition of the cases.

(e) If an offer is received at or about the time of trial in a case designated by the Appeals office for settlement consultation, Counsel will endeavor to have the case placed on a motions calendar to permit consultation with and review by Appeals in accordance with the foregoing procedures.

(f) For issues in docketed and nondocketed cases pending with Appeals which are related to issues in docketed cases over which Counsel has jurisdiction, no settlement offer will be accepted by either Appeals or Counsel unless both agree that the offer is acceptable. The protest procedure will be available to Appeals and regional counsel will have authority to resolve the issue with respect to both the Appeals and Counsel cases. If settlement of the docketed case requires approval by regional counsel or Chief Counsel, the final decision with respect to the issues under the jurisdiction of both Appeals and Counsel will be made by regional counsel or Chief Counsel. See Rev. Proc. 79-59.

(g) Cases classified as 'Small Tax' cases by the Tax Court are given expeditious consideration because such cases are not included on a Trial Status Request. These cases are considered by the Court as ready for placing on a trial calendar as soon as the answer has been filed and are given priority by the Court for trial over other docketed cases. These cases are designated by the Court as small tax cases upon request of petitioners and will include letter 'S' as part of the docket number.

(e) Transfer and centralization of cases.

(1) An Appeals office is authorized to transfer settlement jurisdiction in a non-docketed case or in an excise or employment tax case to another region, if the taxpayer resides in and the taxpayer's books and records are located (or can be made available) in such other region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division.

(2) An Appeals office is authorized to transfer settlement jurisdiction in a docketed case to another region if the location for the hearing by the Tax Court has been set in such other region, except that if the place of hearing is Washington, D.C., settlement jurisdiction shall not be transferred to the region in which Washington, D.C., is located unless the petitioner resides in and the petitioner's books and records are located (or can be made available) in that region. Otherwise, transfer to another region requires the approval of the Director of the Appeals Division. Likewise, the Chief Counsel has corresponding authority to transfer the jurisdiction, authority, and duties of the regional counsel for any region to the regional counsel of another region within which the case has been designated for trial before the Tax Court.

(3) Should a regional commissioner determine that it would better serve the interests of the Government, he or she may, by order in writing, withdraw any case not docketed before the Tax Court from the jurisdiction of the Appeals office, and provide for its disposition under his or her personal direction.

(f) Conference and practice requirements.

Practice and conference procedure before Appeals is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before Appeals:

(1) Rule I.

An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

(2) Rule II.

Appeals will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views in light of the hazards which would exist if the case were litigated. However, no settlement will be made based upon nuisance value of the case to either party. If the taxpayer makes an unacceptable proposal of settlement under circumstances indicating a good faith attempt to reach an agred disposition of the case on a basis fair both to the Government and the taxpayer, the Appeals official generally should give an evaluation of the case in such a manner as to enable the taxpayer to ascertain the kind of settlement that would be recommended for acceptance. Appeals may defer action on or decline to settle some cases or issues (for example, issues on which action has been suspended nationwide) in order to achieve greater uniformity and enhance overall voluntary compliance with the tax laws.

(3) Rule III.

Where the Appeals officer recommends acceptance of the taxpayer's proposal of settlement, or, in the absence of a proposal, recommends action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in Appeals the taxpayer shall be so advised and upon written request shall be accorded a conference with such reviewing officer. The Appeals office may disregard this rule where the interest of the Government would be injured by delay, as for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(4) Rule IV.

Where the Appeals official having settlement authority and the district director deem it advisable, the district director may be represented at any Appeals conferences on a nondocketed case. This rule is also applicable to the Director, Foreign Operations District in the event his or her office issued the preliminary or '30-day letter'.

(5) Rule V.

In order to bring an unagreed income, profits, estate, gift, or Chapter 41, 42, 43, or 44 tax case in prestatutory notice status, an employment or excise tax case, a penalty case, an Employee Plans and Exempt Organization case, a termination of taxable year assessment case, a jeopardy assessment case, or an offer in compromise before the Appeals office, the taxpayer or the taxpayer's representative should first request Appeals consideration and, when required, file with the district office (including the Foreign Operations District) or service center a written protest setting forth specifically the reasons for the refusal to accept the findings. If the protest includes a statement of facts upon which the taxpayer relies, such statement should be declared, to be true under the penalties of perjury. The protest and any new facts, law, or arguments presented therewith will be reviewed by the receiving office for the purpose of deciding whether further development or action is required prior to referring the case to Appeals. Where Appeals has an issue under consideration it may, with the concurrence of the taxpayer, assume jurisdiction in a related case, after the office having original jurisdiction has completed any necessary action. The Director, Appeals Division, may authorize the regional Appeals office to accept jurisdiction (after any necessary action by office having original jurisdiction) in specified classes of cases without written protests provided written or oral requests for Appeals consideration are submitted by or for each taxpayer.

(6) Rule VI.

A taxpayer cannot withhold evidence from the district director of internal revenue and expect to introduce it for the first time before Appeals, at a conference in nondocketed status, without being subject to having the case returned to the district director for reconsideration. Where newly discovered evidence is submitted for the first time to Appeals, in a case pending in nondocketed status, that office, in the reasonable exercise of its discretion, may transmit same to the district director for his or her consideration and comment.

(7) Rule VII.

Where the taxpayer has had the benefit of a conference before the Appeals office in the prestatutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Appeals office in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

(8) Rule VIII.

In cases not docketed in the United States Tax Court on which a conference is being conducted

by the Appeals office, the district counsel may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

(9) Rule IX - Technical advice from the National Office.

(i) Definition and nature of technical advice.

(a) As used in this subparagraph, 'technical advice' means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of an Appeals office in connection with the processing and consideration of a nondocketed case. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the various regions. It does not include memorandum on matters of general technical application furnished to Appeals offices where the issues are not raised in connection with the consideration and handling of a specific taxpayer's case.

(b) The provisions of this subparagraph do not apply to a case under the jurisdiction of a district director or the Bureau of Alcohol, Tobacco, and Firearms, to Employee Plans, Exempt Organization, or certain penalty cases being considered by an Appeals office, or to any case previously considered by an Appeals office. The technical advice provisions applicable to cases under the jurisdiction of a district director, other than Employee Plans and Exempt Organization cases, are set forth in Sec. 601.105(b)(5). The technical advice provisions applicable to Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9). Technical advice may not be requested with respect to a taxable period if a prior Appeals disposition of the same taxable period of the same taxpayer's case was based on mutual concessions (ordinarily with a form 870-AD, Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment). However, technical advice may be requested by a district director on issues previously considered in a prior Appeals disposition, not based on mutual concessions, of the same taxable periods of the same taxpayer with the concurrence of the Appeals office that had the case.

(c) The consideration or examination of the facts relating to a request for a determination letter is considered to be in connection with the consideration and

handling of a taxpayer's case. Thus, an Appeals office may, under this subparagraph, request technical advice with respect to the consideration of a request for a determination letter. The technical advice provisions applicable to a request for a determination letter in Employee Plans and Exempt Organization cases are set forth in Sec. 601.201(n)(9).

(d) If an Appeals office is of the opinion that a ruling letter previously issued to a taxpayer should be modified or revoked and it requests the National Office to reconsider the ruling, the reference of the matter to the National Office is treated as a request for technical advice. The procedures specified in subdivision (iii) of this subparagraph should be followed in order that the National Office may consider the recommendation. Only the National Office can revoke a ruling letter. Before referral to the National Office, the Appeals office should inform the taxpayer of its opinion that the ruling letter should be revoked. The Appeals office, after development of the facts and consideration of the taxpayer's arguments, will decide whether to recommend revocation of the ruling to the National Office. For procedures relating to a request for a ruling, see Sec. 601.201.

(e) The Assistant Commissioner (Technical), acting under a delegation of authority from the Commissioner of Internal Revenue, is exclusively responsible for providing technical advice in any issue involving the establishment of basic principles and rules for the uniform interpretation and application of tax laws in cases under this subparagraph. This authority has been largely redelegated to subordinate officials.

(ii) Areas in which technical advice may be requested.

(a) Appeals offices may request technical advice on any technical or procedural question that develops during the processing and consideration of a case. These procedures are applicable as provided in subdivision (i) of this subparagraph.

(b) As provided in Sec. 601.105(b)(5) (ii)(b) and (iii)(a), requests for technical advice should be made at the earliest possible stage of the examination process. However, if identification of an issue on which technical advice is appropriate is not made until the case is in Appeals, a decision to request such advice (in nondocketed cases) should be made prior to or at the first conference.

(c) Subject to the provisions of (b) of this subdivision, Appeals Offices are encouraged to request technical advice on any technical or procedural question arising in connection with a case described in subdivision (i) of this subparagraph which cannot be resolved on the basis of law, regulations, or a clearly applicable revenue ruling or other precedent issued by the National Office.

(iii) Requesting technical advice.

(a) It is the responsibility of the Appeals Office to determine whether technical advice is to be requested on any issue being considered. However, while the case is under the jurisdiction of the Appeals Office, a taxpayer or his/her representative may request that an issue be referred to the National Office for technical advice on the grounds that a lack of uniformity exists as to the disposition of the issue, or that the issue is so unusual or complex as to warrant consideration by the National Office. While taxpayers are encouraged to make written requests setting forth the facts, law, and argument with respect to the issue, and reason for requesting National Office advice, a taxpayer may make the request orally. If, after considering the taxpayer's request, the Appeals Officer is of the opinion that the circumstances do not warrant referral of the case to the National Office, he/she will so advice the taxpayer. (See subdivision (iv) of this subparagraph for taxpayer's appeal rights where the Appeals Officer declines to request technical advice.)

(b) When technical advice is to be requested, whether or not upon the request of the taxpayer, the taxpayer will be so advised, except as noted in (j) of this subdivision. If the Appeals Office initiates the action, the taxpayer will be furnished a copy of the statement of the pertinent facts and the question or questions proposed for submission to the National Office. The request for advice should be so worded as to avoid possible misunderstanding, in the National Office, of the facts or of the specific point or points at issue.

(c) After receipt of the statement of facts and specific questions, the taxpayer will be given 10 calendar days in which to indicate in writing the extent, if any, to which he/she may not be in complete agreement. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. Every effort should be made to reach agreement as to the facts and specific points at issue. If agreement cannot be reached, the taxpayer may submit,

within 10 calendar days after receipt of notice from the Appeals Office, a statement of his/her understanding as to the specific point or points at issue which will be forwarded to the National Office with the request for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(d) If the taxpayer initiates the action to request advice, and his/her statement of the facts and point or points at issue are not wholly acceptable to the Appeals Office, the taxpayer will be advised in writing as to the areas of disagreement. The taxpayer will be given 10 calendar days after receipt of the written notice to reply to such notice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office. If agreement cannot be reached, both the statements of the taxpayer and the Appeals Office will be forwarded to the National Office.

(e)

(1) In the case of requests for technical advice, the taxpayer must also submit, within the 10-day period referred to in (c) and (d) of this subdivision, whichever is applicable (relating to agreement by the taxpayer with the statement of facts and points submitted in connection with the request for technical advice), the statement described in (f) of this subdivision of proposed deletions pursuant to section 6110(c) of the Code. If the statement is not submitted, the taxpayer will be informed by the Appeals Office that the statement is required. If the Appeals Office does not receive the statement within 10 days after the taxpayer has been informed of the need for the statement, the Appeals Office may decline to submit the request for technical advice. If the Appeals Office decides to request technical advice in a case where the taxpayer has not submitted the statement of proposed deletions, the National Office will make those deletions which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(2) The requirements included in this subparagraph relating to the submission of statements and other material with respect to proposed deletions to be made from technical advice memoranda before public inspection is permitted to take place do not apply to requests for any

document to which section 6104 of the Code applies.

(f) In order to assist the Internal Revenue Service in making the deletions required by section 6110(c) of the Code, from the text of technical advice memoranda which are open to public inspection pursuant to section 6110(a) of the Code, there must accompany requests for such technical advice either a statement of the deletions proposed by the taxpayer, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted. Such statements shall be made in a separate document. The statement of proposed deletions shall be accompanied by a copy of all statements of facts and supporting documents which are submitted to the National Office pursuant to (c) or (d) of this subdivision, on which shall be indicated, by the use of brackets, the material which the taxpayer indicates should be deleted pursuant to section 6110(c) of the Code. The statement of proposed deletions shall indicate the statutory basis for each proposed deletion. The statement of proposed deletions shall not appear or be referred to anywhere in the request for technical advice. If the taxpayer decides to request additional deletions pursuant to section 6110(c) of the Code prior to the time the National Office replies to the request for technical advice, additional statements may be submitted.

(g) If the taxpayer has not already done so, he/she may submit a statement explaining his/her position on the issues, citing precedents which the taxpayer believes will bear on the case. This statement will be forwarded to the National Office with the request for advice. If it is received at a later date, it will be forwarded for association with the case file.

(h) At the time the taxpayer is informed that the matter is being referred to the National Office, he/she will also be informed of the right to a conference in the National Office in the event an adverse decision is indicated, and will be asked to indicate whether a conference is desired.

(i) Generally, prior to replying to the request for technical advice, the National Office shall inform the taxpayer orally or in writing of the material likely to appear in the technical advice memorandum which the taxpayer proposed be deleted but which the Internal Revenue Service determined should not be deleted. If so informed, the taxpayer may submit within 10 days any further information, arguments, or other material in support of the position that such

material be deleted. The Internal Revenue Service will attempt, if feasible, to resolve all disagreements with respect to proposed deletions prior to the time the National Office replies to the request for technical advice. However, in no event shall the taxpayer have the right to a conference with respect to resolution of any disagreements concerning material to be deleted from the text of the technical advice memorandum, but such matters may be considered at any conference otherwise scheduled with respect to the request.

(j) The provisions of (a) through (i) of this subdivision, relating to the referral of issues upon request of the taxpayer, advising taxpayers of the referral of issues, the submission of proposed deletions, and the granting of conferences in the National Office, are not applicable to technical advice memoranda described in section 6110 (g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments. However, in such cases, the taxpayer shall be allowed to provide the statement of proposed deletions to the National Office upon the completion of all proceedings with respect to the investigations or assessments, but prior to the date on which the Commissioner mails the notice pursuant to section 6110 (f)(1) of the Code of intention to disclose the technical advice memorandum.

(k) Form 4463, Request for Technical Advice, should be used for transmitting requests for technical advice to the National Office.

(iv) Appeal by taxpayers of determinations not to seek technical advice.

(a) If the taxpayer has requested referral of an issue before an Appeals Office to the National Office for technical advice, and after consideration of the request, the Appeals Officer is of the opinion that the circumstances do not warrant such referral, he/she will so advise the taxpayer.

(b) The taxpayer may appeal the decision of the Appeals Officer not to request technical advice by submitting to that official, within 10 calendar days after being advised of the decision, a statement of the facts, law, and arguments with respect to the issue, and the reasons why the taxpayer believes the matter should be referred to the National Office for advice. An extension of time must be justified by the taxpayer in writing and approved by the Chief, Appeals Office.

(c) The Appeals Officer will submit the statement of the taxpayer to the chief,

Appeals Office, accompanied by a statement of the officer's reasons why the issue should not be referred to the National Office. The Chief will determine, on the basis of the statements submitted, whether technical advice will be requested. If the Chief determines that technical advice is not warranted, that official will inform the taxpayer in writing that he/she proposes to deny the request. In the letter to the taxpayer the Chief will (except in unusual situations where such action would be prejudicial to the best interests of the Government) state specifically the reasons for the proposed denial. The taxpayer will be given 15 calendar days after receipt of the letter in which to notify the Chief whether the taxpayer agrees with the proposed denial. The taxpayer may not appeal the decision of the Chief, Appeals Office not to request technical advice from the National Office. However, if the taxpayer does not agree with the proposed denial, all data relating to the issue for which technical advice has been sought, including the taxpayer's written request and statements, will be submitted to the National Office, Attention: Director, Appeals Division, for review. After review in the National Office, the Appeals Office will be notified whether the proposed denial is approved or disapproved.

(d) While the matter is being reviewed in the National Office, the Appeals Office will suspend action on the issue (except where the delay would prejudice the Government's interests) until it is notified of the National Office decision. This notification will be made within 30 days after receipt of the data in the National Office. The review will be solely on the basis of the written record and no conference will be held in the National Office.

(v) Conference in the National Office.

(a) If, after a study of the technical advice request, it appears that advice adverse to the taxpayer should be given and a conference has been requested, the taxpayer will be notified of the time and place of the conference. If conferences are being arranged with respect to more than one request for advice involving the same taxpayer, they will be so scheduled as to cause the least inconvenience to the taxpayer. The conference will be arranged by telephone, if possible, and must be held within 21 calendar days after contact has been made. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief.

(b) A taxpayer is entitled, as a matter of right, to only one conference in the

National Office unless one of the circumstances discussed in (c) of this subdivision exists. This conference will usually be held at the branch level in the appropriate division (Corporation Tax Division or Individual Tax Division) in the Office of the Assistant Commissioner (Technical), and will usually be attended by a person who has authority to act for the branch chief. In appropriate cases the Appeals Officer may also attend the conference to clarify the facts in the case. If more than one subject is discussed at the conference, the discussion constitutes a conference with respect to each subject. At the request of the taxpayer or the taxpayer's representative, the conference may be held at an earlier stage in the consideration of the case than the Service would ordinarily designate. A taxpayer has no 'right' of appeal from an action of a branch to the director of a division or to any other National Office official.

(c) In the process of review of a holding proposed by a branch, it may appear that the final answer will involve a reversal of the branch proposal with a result less favorable to the taxpayer. Or it may appear that an adverse holding proposed by a branch will be approved, but on a new or different issue or on different grounds than those on which the branch decided the case. Under either of these circumstances, the taxpayer or the taxpayer's representative will be invited to another conference. The provisions of this subparagraph limiting the number of conferences to which a taxpayer is entitled will not foreclose inviting a taxpayer to attend further conferences when, in the opinion of National Office personnel, such need arises. All additional conferences of this type discussed are held only at the invitation of the Service.

(d) It is the responsibility of the taxpayer to furnish to the National Office, within 21 calendar days after the conference, a written record of any additional data, line of reasoning, precedents, etc., that were proposed by the taxpayer and discussed at the conference but were not previously or adequately presented in writing. Extensions of time will be granted only if justified in writing by the taxpayer and approved by the appropriate Technical branch chief. Any additional material and a copy thereof should be addressed to and sent to the National Office which will forward the copy to the appropriate Appeals Office. The Appeals Office will be requested to give the matter prompt attention, will verify the additional facts and data, and will comment on it to the extent deemed appropriate.

(e) A taxpayer or the taxpayer's representative desiring to obtain information as

to the status of the case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

TELEPHONE NUMBERS (AREA CODE 202) Official:

Director, Corporation Tax Division - 566-4504 or 566-4505

Director, Individual Tax Division - 566-3767 or 566-3788.

(vi) Preparation of technical advice memorandum by the National Office.

(a) Immediately upon receipt in the National Office, the technical employee to whom the case is assigned will analyze the file to ascertain whether it meets the requirements of subdivision (iii) of this subparagraph. If the case is not complete with respect to any requirement in subdivision (iii) (a) through (d) of this subparagraph, appropriate steps will be taken to complete the file. If any request for technical advice does not comply with the requirements of subdivision (iii)(e) of this subparagraph, relating to the statement of proposed deletions, the National Office will make those deletions from the technical advice memorandum which in the judgment of the Commissioner are required by section 6110(c) of the Code.

(b) If the taxpayer has requested a conference in the National Office, the procedures in subdivision (v) of this subparagraph will be followed.

(c) Replies to requests for technical advice will be addressed to the Appeals office and will be drafted in two parts. Each part will identify the taxpayer by name, address, identification number, and year or years involved. The first part (hereafter called the 'technical advice memorandum') will contain (1) a recitation of the pertinent facts having a bearing on the issue; (2) a discussion of the facts, precedents, and reasoning of the National Office; and (3) the conclusions of the National Office. The conclusions will give direct answers, whenever possible, to the specific questions of the Appeals office. The discussion of the issues will be in such detail that the Appeals office is apprised of the reasoning underlying the conclusion. There shall accompany the technical advice memorandum a notice, pursuant to section 6110(f)(1) of the Code, of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third party communications pursuant to section 6110(d) of the Code) which the Appeals office shall forward to the

taxpayer at such time that it furnishes a copy of the technical advice memorandum to the taxpayer pursuant to (e) of this subdivision and subdivision (vii)(b) of this subparagraph.

(d) The second part of the reply will consist of a transmittal memorandum. In the unusual cases it will serve as a vehicle for providing the Appeals office administrative information or other information which, under the nondisclosure statutes, or for other reasons, may not be discussed with the taxpayer.

(e) It is the general practice of the Service to furnish a copy of the technical advice memorandum to the taxpayer after it has been adopted by the Appeals office. However, in the case of technical advice memorandums described in section 6110(g)(5)(A) of the Code, relating to cases involving criminal or civil fraud investigations and jeopardy or termination assessments, a copy of the technical advice memorandum shall not be furnished the taxpayer until all proceedings with respect to the investigations or assessments are completed.

(f) After receiving the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum, the taxpayer, if desiring to protest the disclosure of certain information in the memorandum, must, within 20 days after the notice is mailed, submit a written statement identifying those deletions not made by the Internal Revenue Service which the taxpayer believes should have been made. The taxpayer shall also submit a copy of the version of the technical advice memorandum proposed to be open to public inspection on which the taxpayer indicates, by the use of brackets, the deletions proposed by the taxpayer but which have not been made by the Internal Revenue Service. Generally, the Internal Revenue Service will not consider the deletion of any material which the taxpayer did not, prior to the time when the National Office sent its reply to the request for technical advice to the Appeals office, propose be deleted. The Internal Revenue Service shall, within 20 days after receipt of the response by the taxpayer to the notice pursuant to section 6110(f)(1) of the Code, mail to the taxpayer its final administrative conclusion regarding the deletions to be made.

(vii) Action on technical advice in Appeals offices.

(a) Unless the Chief, Appeals Office, feels that the conclusions reached by the National Office in a technical advice memorandum should be reconsidered and

promptly requests such reconsideration, the Appeals office will proceed to process the taxpayer's case taking into account the conclusions expressed in the technical advice memorandum. The effect of technical advice on the taxpayer's case is set forth in subdivision (viii) of this subparagraph.

(b) The Appeals office will furnish the taxpayer a copy of the technical advice memorandum described in subdivision (vi)(c) of this subparagraph and the notice pursuant to section 6110(f)(1) of the Code of intention to disclose the technical advice memorandum (including a copy of the version proposed to be open to public inspection and notations of third-party communications pursuant to section 6110(d) of the Code). The preceding sentence shall not apply to technical advice memorandums involving civil fraud or criminal investigations, or jeopardy or termination assessments, as described in subdivision (iii)(j) of this subparagraph (except to the extent provided in subdivision (vi)(e) of this subparagraph) or to documents to which section 6104 of the Code applies.

(c) In those cases in which the National Office advises the Appeals office that it should not furnish a copy of the technical advice memorandum to the taxpayer, the Appeals office will so inform the taxpayer if he/she requests a copy.

(viii) Effect of technical advice.

(a) A technical advice memorandum represents an expression of the views of the Service as to the application of law, regulations, and precedents to the facts of a specific case, and is issued primarily as a means of assisting Service officials in the closing of the case involved.

(b) Except in rare or unusual circumstances, a holding in a technical advice memorandum that is favorable to the taxpayer is applied retroactively. Moreover, since technical advice, as described in subdivision (i) of this subparagraph, is issued only on closed transactions, a holding in a technical advice memorandum that is adverse to the taxpayer is also applied retroactively unless the Assistant Commissioner or Deputy Assisitant Commissioner (Technical) exercises the discretionary authority under section 7805(b) of the Code to limit the retroactive effect of the holding. Likewise, a holding in a technical advice memorandum that modifies or revokes a holding in a prior technical advice memorandum will also be applied retroactively, with one exception. If the new holding is less favorable to the taxpayer, it will generally

not be applied to the period in which the taxpayer relied on the prior holding in situations involving continuing transactions of the type described in Sec. 601.201(l)(7) and Sec. 601.201(l)(8).

(c) The Appeals office is bound by technical advice favorable to the taxpayer. However, if the technical advice is unfavorable to the taxpayer, the Appeals office may settle the issue in the usual manner under existing authority. For the effect of technical advice in Employee Plans and Exempt Organization cases see Sec. 601.201(n)(9)(viii).

(d) In connection with section 446 of the Code, taxpayers may request permission from the Assistant Commissioner (Technical) to change a method of accounting and obtain a 10-year (or less) spread of the resulting adjustments. Such a request should be made prior to or at the first Appeals conference. The Appeals office has authority to allow a change and the resulting spread without referring the case to Technical.

(e) Technical advice memorandums often form the basis for revenue rulings. For the description of revenue rulings and the effect thereof, see Sec. 01.601(d)(2)(i)(a) and 601.601(d)(2)(v).

(f) An Appeals office may raise an issue in a taxable period, even though technical advice may have been asked for and furnished with regard to the same or a similar issue in any other taxable period.

(g) Limitation on the jurisdiction and function of Appeals.

(1) Overpayment of more than $200,000.

If Appeals determines that there is an overpayment of income, war profits, excess profits, estate, generation-skipping transfer, or gift tax, or any tax imposed by chapters 41 through 44, including penalties and interest, in excess of $200,000, such determination will be considered by the Joint Committee on Taxation, See Sec. 601.108

(2) Offers in compromise.

For jurisdiction of Appeals with respect to offers in compromise of tax liabilities, see Sec. 601.203.

(3) Closing agreements.

For jurisdiction of Appeals with respect to closing agreements under section 7121 of the Code relating to any internal revenue tax liability, see Sec. 601.202.

(h) Reopening closed cases not docketed in the Tax Court.

(1) A case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both the Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculations, and then only with the approval of the Regional Director of Appeals.

(2) Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both Appeals and the taxpayer may be reopened upon written application from the taxpayer, and only with the approval of the Regional Director of Appeals. The processing of an application for a tentative carryback adjustment or of a claim for refund or credit for an overassessment (for a year involved in the prior closing) attributable to a claimed deduction or credit for a carryback provided by law, and not included in a previous Appeals determination, shall not be considered a reopening requiring approval. A subsequent assessment of an excessive tentative allowance shall likewise not be considered such a reopening. The Director of the Appeals Division may authorize, in advance, the reopening of similar classes of cases where legislative enactments or compelling administrative reasons require such advance approval.

(3) A case not docketed in the Tax Court and closed by Appeals on a basis not involving concessions made by both Appeals and the taxpayer will not be reopened by action initiated by the Service unless the disposition involved fraud, malfeasance, concealment or misrepresentation of material fact, an important mistake in mathematical calculation, or such other circumstance that indicates that failure to take such action would be a serious administrative omission, and then only with the approval of the Regional Director of Appeals.

(4) A case not docketed in the Tax Court and closed by the Appeals on a basis not involving concessions made by both Appeals and the taxpayer may be reopened by the taxpayer by any appropriate means, such as by the filing of a timely claim for refund.

(i) Special procedures for crude oil windfall profit tax cases.

For special procedures relating to crude oil windfall profit tax cases, see Sec. 601.405.

(5 U.S.C. 301 and 552) 80 Stat. 379 and 383; sec. 7805 of the Internal Revenue Code of 1954, 68A

Stat. 917 (26 U.S.C. 7805))

[32 FR 15990, Nov. 22, 1967]

Sec. 255. - Approval of title prior to Federal land purchases; payment of title expenses; application to Tennessee Valley Authority; Federal jurisdiction over acquisitions

Unless the Attorney General gives prior written approval of the sufficiency of the title to land for the purpose for which the property is being acquired by the United States, public money may not be expended for the purchase of the land or any interest therein.

The Attorney General may delegate his responsibility under this section to other departments and agencies, subject to his general supervision and in accordance with regulations promulgated by him.

Any Federal department or agency which has been delegated the responsibility to approve land titles under this section may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

Except where otherwise authorized by law or provided by contract, the expenses of procuring certificates of titles or other evidences of title as the Attorney General may require may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department or agency.

The foregoing provisions of this section shall not be construed to affect in any manner any existing provisions of law which are applicable to the acquisition of lands or interests in land by the Tennessee Valley Authority.

Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such

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cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted

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(Cite as: 361 U.S. 87, 80 S.Ct. 144)

4 L.Ed.2d 127, 4 A.F.T.R.2d 5778, 59-2 USTC P 9757

Supreme Court of the United States

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

Fred N. ACKER.

No. 13.

Argued Oct. 19, 1959.

Decided Nov. 16, 1959.

Proceedings on petition for review of a decision of the Tax Court. The Court of Appeals for the Sixth Circuit, 258 F.2d 568, affirmed in part and reversed in part. On certiorari granted, the Supreme Court, Mr. Justice Whittaker, held that statute did not authorize treatment of taxpayer's failure to file declaration of estimated tax as the equivalent of a declaration estimating his tax to be zero, and that while failure to file declaration subjected him to addition to tax for failure to file it did not subject him to further addition for filing of a 'substantial underestimate' of tax.

Affirmed.

Mr. Justice Frankfurter, Mr. Justice Clark and Mr. Justice Harlan, dissented.

West Headnotes

[1] Federal Courts k457

170Bk457

(Formerly 106k383(1))

Even though 1954 Internal Revenue Code had eliminated question presented as respects taxable years beginning after January 1, 1955, question, as to whether, under Internal Revenue Code of 1939, failure of taxpayer to file declaration not only subjected him to addition to tax for failure to file declaration but also subjected him to further addition to tax for filing of "substantial underestimate" of tax, was still a live one where a substantial number of cases which arose under and were governed by 1939 Code were pending; and because of conflict among circuits, Supreme Court granted certiorari to determine issue. 26 U.S.C.A. (I.R.C.1939) § 294(d)(1)(A), (2); 26 U.S.C.A. (I.R.C.1954) § 6654.

[2] Internal Revenue k5215

220k5215

(Formerly 220k2341)

Both addition to tax imposed for failure to file declaration of estimated tax and addition to tax imposed for substantial underestimation of tax were "penalties", and Code provisions imposing same were required to be strictly construed. 26 U.S.C.A. (I.R.C.1939) §§ 58, 294(d)(1)(A), (2).

[3] Statutes k241(1)

361k241(1)

Penal statutes must be strictly construed.

[4] Statutes k241(1)

361k241(1)

One is not to be subjected to penalty unless words of statute plainly impose it.

[5] Internal Revenue k5201

220k5201

(Formerly 220k2331)

The law does not permit addition to tax to be imposed by regulation.

[6] Internal Revenue k4811

220k4811

(Formerly 220k153)

It would have to be presumed that Congress had known that courts, except Tax Court, had almost uniformly held (1) that Code subdivision did not authorize an addition to tax in case where no declaration had been filed, and (2) that regulation was invalid; and, therefore, it could not be inferred, from fact that Congress, with knowledge of regulation, had several times amended Code without changing Code section in question, that Congress approved regulation. 26 U.S.C.A. (I.R.C.1939) § 294(d)(2).

[7] Internal Revenue k4811

220k4811

(Formerly 220k153)

Congress could not add to or expand statute, imposing addition for substantial underestimation of tax, by impliedly approving regulation providing that failure to file declaration of estimated tax should be deemed equivalent of a declaration estimating tax to be zero. 26 U.S.C.A. (I.R.C.1939) § 294(d)(2).

[8] Internal Revenue k5215

220k5215

(Formerly 220k2341)

Statute did not authorize treatment of taxpayer's failure to file declaration of estimated tax as the equivalent of a declaration estimating his tax to be zero; and, while failure of taxpayer to file declaration subjected him to addition to tax for failure to file, it did not subject him to further addition for filing of a "substantial underestimate" of tax; overruling Abbott v. Commissioner, 258 F.2d 537, Patchen v. Commissioner, 258 F.2d 544, Hansen v. Commissioner, 258 F.2d 585, Palmisano v. United States, 159 F.Supp. 98, Farrow v. United States, 150 F.Supp. 581, Peterson v. United States, 141 F.Supp. 382, Clarence F. Buckley, 29 T.C. 455, and Marcel Garsaud, 28 T.C. 1086, 26 U.S.C.A. (I.R.C.1939) § 294(d)(2).

**145 *87 Mr. Ralph S. Spritzer, Washington, D.C., for petitioner.

Mr. Fred N. Acker, pro se, for respondent.

Mr. Justice WHITTAKER delivered the opinion of the Court.

This case presents the question whether, under the Internal Revenue Code of 1939, the failure of a taxpayer to file a declaration of estimated income tax, as required by s 58, [FN1] not only subjects him to the addition to the tax *88 prescribed by s 294(d)(1)(A) for failure to file the declaration, but also subjects him to the further addition to the tax prescribed by s 294(d)(2) for the filing of a 'substantial underestimate' of his tax.

FN1. Section 58, as amended, provides, in pertinent part, that:

'Every individual * * * shall, at the time prescribed in subsection (d), make a declaration of his estimated tax for the taxable year if (his gross income from wages or other sources can reasonably be expected to exceed stated sums, showing) the amount which he estimates as the amount of tax under this chapter for the taxable year, without regard to any credits under Sections 32 and 35 for taxes withheld at source * * *; the amount which he estimates as (such) credits * * *; and (that) the excess of the (estimated tax) over the (estimated credits) shall be considered the estimated tax for the taxable year.' 26 U.S.C. (1952 ed.) s 58, 26 U.S.C.A. s 58.

Section 294(d)(1)(A) provides, in substance, that if a taxpayer fails to make and file 'a declaration of estimated tax,' within the time prescribed, there shall be added to the tax an amount equal to 5% of each installment due and unpaid, plus 1% of such unpaid installments for each month except the first, not exceeding an aggregate of 10% of such unpaid installments. [FN2]

FN2. Section 294(d)(1)(A), as amended, provides, in pertinent part, that:

'(A) Failure to file declaration.

'In the case of a failure to make and file a declaration of estimated tax within the time prescribed * * * there shall be added to the tax 5 per centum of each installment due but unpaid, and in addition, with respect to each such installment due but unpaid, 1 per centum of the unpaid amount thereof for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment. For the purposes of this subparagraph the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the credits under sections 32 and 35.' 26 U.S.C. (1952 ed.) s 294(d)(1)(A), 26 U.S.C.A. s 294(d)(1)(A).

Section 294(d)(2), in pertinent part, provides:

'(2) Substantial underestimate of estimated tax.

'If 80 per centum of the tax (determined without regard to the credits under sections 32 and 35) * * * exceeds the estimated tax (increased by such credits), there shall be added to the tax an amount **146 equal to *89 such excess, or equal to 6 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser * * *.' 26 U.S.C. (1952 ed.) s 294(d)(2), 26 U.S.C.A. s 294(d)(2).

Section 29.294--1(b)(3)(A) of Treasury Regulation 111, promulgated under the Internal Revenue Code of 1939, contains the statement that:

'In the event of a failure to file the required declaration, the amount of the estimated tax for the purposes of (s 294(d)(2)) is zero.'

[1] Respondent, without reasonable cause, failed to file a declaration of his estimated income tax for any of the years 1947 through 1950. The Commissioner imposed an addition to the tax for each of those years under s 294(d)(1)(A) for failure to file the declaration, and also imposed a further addition to the tax for each of those years under s 294(d)(2) for a 'substantial underestimate' of the tax. The Tax Court sustained the Commissioner's imposition of both additions. The Court of Appeals affirmed with respect to the addition imposed for failure to file the declaration, but reversed with respect to the addition imposed for substantial underestimation of the tax, holding that s 294(d)(2) does not authorize the treatment of a taxpayer's failure to file a declaration of estimated tax as the equivalent of a declaration estimating no tax, and that the regulation, which purports to do so, is not supported by the statute and is invalid. 258 F.2d 568. Because of a conflict among the circuits [FN3] we *90 granted the Commissioner's petition for certiorari. 358 U.S. 940, 79 S.Ct. 346, 3 L.Ed.2d 348.

FN3. After the Sixth Circuit had delivered its opinion in this case but before it had decided the Commissioner's petition for rehearing, the Third Circuit, in Abbott v. Commissioner, 258 F.2d 537, and the Fifth Circuit, in Patchen v. Commissioner, 258 F.2d 544, held that the failure of a taxpayer to file a declaration of estimated tax subjected him not only to the 'addition to the tax' imposed by s 294(d)(1)(A) for failure to file a declaration, but also to the 'addition to the tax' imposed by s 294(d)(2) for a 'substantial underestimate' of his tax. Less than two months earlier, the Ninth Circuit, too, had so held in Hansen v. Commissioner, 258 F.2d 585.

From the beginning of litigation involving the question here presented, a large majority of the published opinions of the District Courts have held that s 294(d)(2) does not authorize the treatment of a taxpayer's failure to file any declaration at all as the equivalent of a declaration estimating his tax to be zero, and that the regulation attempts to amend and extend the statute and is therefore invalid. See, e.g., United States v. Ridley, D.C., 120 F.Supp. 530, 538; United States v. Ridley, D.C., 127 F.Supp. 3, 11; Owen v. United States, D.C., 134 F.Supp. 31, 39, modified on another point sub nom. Knop v. United States, 8 Cir., 234 F.2d 760; Powell v. Granquist, D.C., 146 F.Supp. 308, 312, affirmed 9 Cir., 252 F.2d 56; Hodgkinson v. United States, 57--1 U.S.T.C. 9294; Jones v. Wood, D.C., 151 F.Supp. 678; Glass v. Dunn, 56--2 U.S.T.C. 9840; Stenzel v. United States, D.C., 150 F.Supp. 364; Todd v. United States, 57--2 U.S.T.C. 9768; Erwin v. Granquist, 57--2 U.S.T.C. 9732, affirmed Erwin v. Cranquist, 9 Cir., 253 F.2d 26; Barnwell v. United States, D.C., 164 F. Supp. 430. Three District Court opinions have held the other way, Palmisano v. United States, 158 F.Supp. 98; Farrow v. United States, 150 F.Supp. 581; and Peterson v. United States, 141 F.Supp. 382; and the Tax Court has consistently so held. See, e.g., Buckley v. Commissioner, 29 T.C. 455; Garsaud v. Commissioner, 28 T.C. 1086, 1090.

The 1954 Internal Revenue Code has eliminated the question here presented as respects taxable years beginning after January 1, 1955, by providing for a single addition to the tax of 6% of the amount of underpayment, whether for failure to file a declaration of estimated tax or timely to pay the quarterly installmants or for a substantial underestimation of the tax. 26 U.S.C. (1952 ed., Supp. V) s 6654, 26 U.S.C. A. s 6654. But the question is still a live one because of the pendency of a substantial number of cases which arose under and are governed by the 1939 Code.

**147 The first and primary question that we must decide is whether there is any expressed or necessarily implied provision or language in s 294(d)(2) which authorizes the *91 treatment of a taxpayer's failure to file a declaration of estimated tax as, or the equivalent of, a declaration estimating his tax to be zero.

[2][3][4] We are here concerned with a taxing Act which imposes a penalty. [FN4] The law is settled that

'penal statutes are to be construed strictly,' Federal Communications Commission v. American Broadcasting Co., 347 U.S. 284, 296, 74 S.Ct. 593, 601, 98 L.Ed. 699, and that one 'is not to be subject to a penalty unless the words of the statute plainly impose it,' Keppel v. Tiffin Savings Bank, 197 U.S. 356, 362, 25 S.Ct. 443, 445, 49 L.Ed. 790. See, e.g., Tiffany v. National Bank of Missouri, 18 Wall. 409, 410, 21 L.Ed. 862; Elliott v. Railroad Co., 99 U.S. 573, 576, 25 L.Ed. 292.

FN4. Although the Commissioner concedes that the addition to the tax imposed by s 294(d)(1)(A) for failure to file a declaration of estimated tax is a penalty, he contends that the addition to the tax imposed by s 294(d)(2) for substantial underestimation of the tax may not be so regarded. He attempts to support a distinction upon the ground that the amount of the addition imposed by s 294(d)(1)(A) of 5%, plus 1% per month of unpaid installments, not exceeding an aggregate of 10% of such unpaid installments, does not represent a normal interest rate, whereas, he argues, the addition of the maximum of 6% that may be imposed under s 294(d)(2) is a normal interest rate and should not be regarded as a penalty but as interest to compensate the Government for delayed payment.

We think this argument is unsound, for both of the additions are imposed for the breach of statutory duty, and both are characterized by the same language. Each is stated in the respective sections to be an 'addition to the tax' itself; and, being such, it cannot be interest. Moreover, being 'addition(s) to the tax,' both additions are themselves as subject to statutory interest as the remainder of the tax. 26 U.S.C. (1952 ed.) s 292(a), 26 U.S.C.A. s 292(a).

[5] Viewing s 294(d)(2) in the light of this rule, we fail to find any expressed or necessarily implied provision or language that purports to authorize the treatment of a taxpayer's failure to file a declaration of estimated tax as, or the equivalent of, a declaration estimating his tax to be zero. This section contains no words or language *92 to that effect, and its implications look the other way. By twice mentioning, and predicating its application upon, 'the estimated tax' the section seems necessarily to contemplate, and to apply only to, cases in which a declaration of 'the estimated tax' has been made and filed. The fact that the section contains no basis or means for the computation of any addition to the tax in a case where no declaration has been filed would seem to settle the point beyond all controversy. If the section had in any appropriate words conveyed the thought expressed by the regulation it would thereby have clearly authorized the Commissioner to treat the taxpayer's failure to file a declaration as the equivalent of a declaration estimating his tax at zero and, hence, as constituting a 'substantial underestimate' of his tax. But the section contains nothing to that effect, and, therefore, to uphold this addition to the tax would be to hold that it may be imposed by regulation, which, of course, the law does not permit. United States v. Calamaro, 354 U.S. 351, 359, 77 S.Ct. 1138, 1143, 1 L.Ed.2d 1394; Koshland v. Helvering, 298 U.S. 441, 446--447, 56 S.Ct. 767, 769--770, 80 L.Ed. 1268; Manhattan General Equipment Co. v. Commissioner, 297 U.S. 129, 134, 56 S.Ct. 397, 399, 80 L.Ed. 528.

The Commissioner points to the fact that both the Senate Report [FN5] which accompanied the bill that became the Current Tax Payment Act of 1943, [FN6] and the **148 Conference Report [FN7] relating to that bill, contained the statement which was later embodied in the regulation. He then argues that by reading s 294(d)(2) in connection with that statement in those reports it becomes evident *93 that Congress intended by s 294(d)(2) to treat the failure to file a declaration as the equivalent of a declaration estimating no tax. He urges us to give effect to the congressional intention which he thinks is thus disclosed. However, these reports pertained to the forerunner of the section with which we are now confronted, and not to that section itself. Bearing in mind that we are here concerned with an attempt to justify the imposition of a second penalty for the same omission for which Congress has specifically provided a separate and very substantial penalty, we cannot say that the legislative history of the initial enactment is so persuasive as to overcome the language of s 294(d)(2) which seems clearly to contemplate the filing of an estimate before there can be an

underestimate.

FN5. S.Rep. No. 221, 78th Cong., 1st Sess., p. 42; 1943 Cum.Bull. 1314, 1345.

FN6. Section 5(b) of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, introduced into the 1939 Code what, as amended, is now s 294(d)(2) of that Code.

FN7. H.R.Conf.Rep. No. 510, 78th Cong., 1st Sess., p. 56; 1943 Cum.Bull. 1351, 1372.

[6][7] The Commissioner next argues that the fact that Congress, with knowledge of the regulation, several times amended the 1939 Code but left s 294(d)(2) unchanged, shows that Congress approved the regulation, and that we should accordingly hold it to be valid. This argument is not persuasive, for it must be presumed that Congress also knew that the courts, except the Tax Court, had almost uniformly held that s 294(d)(2) does not authorize an addition to the tax in a case where no declaration has been filed, and that the regulation is invalid. [FN8] But the point is immaterial, for Congress could not add to or expand this statute by impliedly approving the regulation.

FN8. See Note 3.

[8] These considerations compel us to conclude that s 294(d)(2) does not authorize the treatment of a taxpayer's failure to file a declaration of estimated tax as the equivalent of a declaration estimating his tax to be zero. The questioned regulation must therefore be regarded 'as *94 no more than an attempted addition to the statute of something which is not there.' United States v. Calamaro, supra, 354 U.S. at page 359, 77 S.Ct. at page 1143.

Affirmed.

Mr. Justice FRANKFURTER, whom Mr. Justice CLARK and Mr. Justice HARLAN join, dissenting.

English courts would decide the case as it is being decided here. They would do so because English courts do not recognize the relevance of legislative explanations of the meaning of a statute made in the course of its enactment. If Parliament desires to put a gloss on the meaning of ordinary language, it must incorporate it in the text of legislation. See Plucknett, A Concise History of the Common Law (5th ed.), 330--336; Amos, The Interpretation of Statutes, 5 Camb.L.J. 163; Davies, The Interpretation of Statutes, 35 Col.L.Rev. 519; Lord Haldane in Viscountiss Rhondda's Claim, (1922) 2 A.C. 339, 383--384. Quite otherwise has been the process of statutory construction practiced by this Court over the decades in scores and scores of cases. Congress can be the glossator of the words it legislatively uses either by writing its desired meaning, however odd, into the taxt of its enactment, or by a contemporaneously authoritative explanation accompanying a statute. The most authoritative form of such explanation is a congressional report defining the scope and meaning of proposed legislation. The most authoritative report is a Conference Report acted upon by both Houses and therefore unequivocally representing the will of both Houses as the joint legislative body.

**149 No doubt to find failure to file a declaration of estimated income to be a 'substantial underestimate' would be to attribute to Congress a most unlikely meaning for that phrase in s 294(d)(2) simpliciter. But if Congress chooses by appropriate means for expressing its *95 purpose to use language with an unlikely and even odd meaning, it is not for this Court to frustrate its purpose. The Court's task is to construe not English

but congressional English. Our problem is not what do ordinary English words mean, but what did Congress mean them to mean. 'It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law and does not preclude consideration of persuasive evidence if it exists.' Boston Sand & Gravel Co. v. United States, 278 U.S. 41, 48, 49 S.Ct. 52, 54, 73 L.Ed. 170.

Here we have the most persuasive kind of evidence that Congress did not mean the language in controversy, however plain it may be to the ordinary user of English, to have the ordinary meaning. These provisions were first enacted in the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, as additions to s 294(a) of the Internal Revenue Code of 1939. The Conference Report, H.R.Conf.Rep. No. 510, p. 56, and the Senate Report, S.Rep.No. 221, p. 42, both gave the provision dealing with substantial underestimation of taxes the following gloss:

'In the event of a failure to file any declaration where one is due, the amount of the estimated tax for the purposes of this provision will be zero.'

The revision of the section eight months later by the Revenue Act of 1943, c. 63, 58 Stat. 21, did not affect its substance, and this provision, therefore, continued to carry the original gloss. While the Court adverts to this congressional definition, it disregards its controlling significance. [FN*]

FN* The essential reliance of the Court is on its characterization of s 294(d) (2) as a penalty. No adequate justification for this exists. Section 294(d)(2) on its face indicates that it is in the nature of an interest charge, designed to compensate the Treasury for delay in receipt of funds which a reasonably accurate estimate would have disclosed to be due and owing. Significantly, this charge is imposed regardless of fault, while s 294(d)(1)(A), a true penalty provision, authorizes no addition to tax when the failure to file is shown 'to be due to reasonable cause and not to willful neglect.' Had taxpayer here had reasonable cause for failure to file, the 10% addition under s 294(d) (1)(A) could not have been imposed. Yet taxes would have been withheld by him pending the filing of a final return for the year. Section 294(d)(2) provides the Government a definite means for ascertaining the compensation for this loss of funds.

*96 I agree with the construction placed upon the provision by the Third, Fifth, and Ninth Circuits. Abbott v. Commissioner, 3 Cir., 1958, 258 F.2d 537; Patchen v. Commissioner, 5 Cir., 1958, 258 F.2d 544; Hansen v. Commissioner, 9 Cir., 1958, 258 F.2d 585.

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THOMSON FINDLAW

United States v. Calamaro, 354 U.S. 351, 77 S.Ct. 1138 (1957).

Supreme Court of the United States

UNITED STATES of America, Petitioner,

v.

Victor CALAMARO.

No. 304.

Decided June 17, 1957.

Mr. Justice HARLAN delivered the opinion of the Court.

The question before us is whether the respondent, a so-called 'pick- up man' in a type of lottery called the 'numbers game,' is subject to the annual $50 special occupational tax enacted by Subchapter B of Chapter 27A (Wagering Taxes) of the Internal Revenue Code of 1939, 65 Stat. 529, 530, 26 U.S.C. § 3285 et seq., 26 U.S.C.A. § 3285 et seq.

As will be seen from the statute, whose material parts are printed in the margin, [FN1] this Chapter of the 1939 Code enacts two kinds of wagering taxes: (1) An excise tax, imposed by § 3285(d) on persons 'engaged in the business of accepting wagers,' and (2) a special occupational tax, imposed by § 3290 not only on persons who are subject to the excise tax, being 'engaged in the business,' but also on those who are 'engaged in receiving wagers' on behalf of one subject to the excise tax. By definition the 'numbers game' is among the wagering transactions included in the statute.

At the outset we must understand some professional gambling terminology which has been given us by the parties. A numbers game involves three principal functional types of individuals: (1) the 'banker,' who deals in the numbers and against whom the player bets; (2) the 'writer,' who, for the banker, does the actual selling of the numbers to the public, and who records on triplicate slips the numbers sold to each player and the amount of his wager; and (3) the 'pick-up man,' who collects wagering slips [FN2] from the writer and delivers them to the banker. If there are winnings to be distributed, the banker delivers the required amount to the writer, who in turn pays off the successful players.

The respondent here was a pick-up man for a Philadelphia banker, receiving for his services a salary of $40 a week, but having no proprietary interest in this numbers enterprise. He was convicted, after a jury trial in the United States District Court for the Eastern District of Pennsylvania, of failing to pay the § 3290 occupational tax, and was fined $1,000. [FN3] The Court of Appeals reversed by a divided court, 236 F.2d 182, and upon the Government's petition we granted certiorari, 352 U.S. 864, 77 S.Ct. 97, 1 L.Ed.2d 75, to resolve the conflict between the decision below and that of the Court of Appeals for the Fifth Circuit in Sagonias v. United States, 223 F.2d 146, as to the scope of § 3290. For reasons given hereafter we consider that the Court of Appeals in this case took the correct view of this statute.

The nub of the Court of Appeals' holding was put in the following language, with which we agree:

> 'In normal usage of familiar language, 'receiving wagers' is what someone on the 'banking' side of gambling does in dealing with a bettor. Placing and receiving a wager are opposite sides of a single coin. You can't have one without the other. (The court here referred to the definition of 'wager' contained in § 3285(b)(1)(C); note 1, supra.) Before the pick-up man enters the picture, in such a case as we have here, the wager has been received physically by the writer and, in legal contemplation, by the writer's principal as well. The government recognizes--and in an appropriate case no doubt would insist--that what the writer does in relation to the bettor amounts to 'receiving a wager.' Thus, the government has to argue that the wager is received a second time when the writer hands the yellow slip to the pick-up man. But we think this ignores the very real difference between a wager and a record of a wagering transaction. It is the banking record and not the wager which the pick-up man receives from the writer and transmits to the bank. The pick-up man no more receives wagers than a messenger, who carries records of customer transactions from a branch bank to a central office, receives deposits.' 236 F.2d at pages 184--185.

We do not think that either the language or purpose of this statute, as revealed by its legislative history, supports the position of the Government. When the phrase 'receiving wagers' is read in conjunction with § 3285(b)(1), which defines 'wager' in terms of the 'placing' of a bet in connection with any of the kinds of wagering transactions embraced in the statute, [FN4] it seems evident that the Court of Appeals was quite correct in regarding the 'placing' and 'receiving' of a wager as being 'opposite sides of a single coin.' [FN5] In other words, we think that as used in § 3290 the term 'receiving' a wager is synonymous with 'accepting' a wager; [FN6] that it is the making of a gambling contract, not the transportation of a piece of paper, to which the statute refers; and hence that, in such a case as this, it is the writer and not the pick-up man who is 'engaged in receiving wagers' within the meaning of § 3290.

We consider the legislative history of the statute, such as it is, to be fully consistent with this interpretation of § 3290. In the Senate and House Reports on the bill, it is stated:

> '* * * A person is considered to be in the business of accepting wagers if he is engaged as a principal who, in accepting wagers, does so on his own account. The principals in such transactions are commonly referred to as 'bookmakers,' although it is not intended that any technical definition of 'bookmaker,' such as the maintenance of a handbook or other device for the recording of wagers, be required. It is intended that a wager be considered as 'placed' with a principal when it has been placed with another person acting for him. Persons who receive bets for principals are sometimes known as 'bookmakers' agents' or as 'runners.' * * *

'As in the case of bookmaking transactions, a wager will be considered as 'placed' in a pool or in a lottery whether placed directly with the person who conducts the pool or lottery or with another person acting for such a person.' H.R.Rep. No. 586, 82d Cong., 1st Sess. 56; S.Rep. No. 781, 82d Cong., 1st Sess. 114, U.S. Code Congressional and Administrative News 1951, vol. 2, p. 2091 (emphasis added).

Again, in the case of a numbers game, this indicates that Congress regarded the 'placing' or a wager as being complemented by its 'receipt' by the banker or by one acting for him in that transaction, that is, the writer and not the pick-up man.

Nor, contrary to what the Government contends, can we see anything in the registration provisions of § 3291 which points to the pick-up man as being considered a 'receiver' of wagers. Those provisions simply provide that one liable for any tax imposed by the statute must register his name and address with the collector of the district, and require in addition, (a) as to those subject to the § 3285 excise tax, the registration of the name and address 'of each person who is engaged in receiving wagers for him or on his behalf,' and (b) as to those subject to the § 3290 occupational tax, the registration of the name and address of each person for whom they are 'engaged in receiving wagers.' [FN7] It is doubtless true that these provisions, as well as the occupational tax itself, [FN8] were designed at least in part to facilitate collection of the excise tax. It is likewise plausible to suppose, as the Government suggests, that the more participants in a gambling enterprise are swept within these provisions, the more likely it is that information making possible the collection of excise taxes will be secured. The fact remains, however, that Congress did not choose to subject all employees of gambling enterprises to the tax and reporting requirements, but was content to impose them on persons actually 'engaged in receiving wagers.' Neither we nor the Commissioner may rewrite the statute simply because we may feel that the scheme it creates could be improved upon. [FN9]

We can give no weight to the Government's suggestion that holding the pick-up man to be no subject to this tax will defeat the policy of the statute because its enactment was 'in part motivated by a congressional desire to suppress wagering.' [FN10] The statute was passed, and its constitutionality was upheld, as a revenue measure, United States v. Kahriger, 345 U.S. 22, 73 S.Ct. 510, 97 L.Ed. 754, and, apart from all else, in construing it we would not be justified in resorting to collateral motives or effects which, standing apart from the federal taxing power, might place the constitutionality of the statute in doubt. See Id., 345 U.S. at page 31, 73 S.Ct. at page 514.

Finally, the Government points to the fact that the Treasury Regulations relating to the statute purport to include the pick-up man among those subject to the § 3290 tax, [FN11] and argues (a) that this constitutes an administrative interpretation to which we should give weight in construing the statute, particularly because (b) section 3290 was carried over in haec verba into § 4411 of the Internal Revenue Code of 1954, 26 U.S.C.A. § 4411. We find neither argument persuasive. In light of the above discussion, we cannot but regard this Treasury Regulation as no more than an attempted addition to the statute of something which is not there. [FN12] As such the regulation can furnish no sustenance to the statute. Koshland v. Helvering, 298 U.S. 441, 446--447, 56 S.Ct. 767, 769--770, 80 L.Ed. 1268. Nor is the Government helped by its argument as to the 1954 Code. The regulation had been in effect for only three years, [FN13] and there is nothing to indicate that it was ever called to the attention of Congress. The re-enactment of § 3290 in the 1954 Code was not accompanied by any congressional discussion which throws light on its intended scope. In such circumstances we consider the 1954 re-enactment to be without significance. Commissioner of Internal Revenue v. Glenshaw Glass Co., 348 U.S. 426, 431, 75 S.Ct. 473, 476, 99 L.Ed. 483.

In conclusion, we cannot accept the alternative reasoning of the dissenting judge below who, relying on that part of the opinion in Daley v. United States, 1 Cir., 231 F.2d 123, 128, relating to the trial court's charge to the jury in a prosecution for failing to pay the § 3285 excise tax, [FN14] regarded the respondent's conviction here as sustainable also on the theory that he was a person 'engaged in the business of accepting wagers' within the meaning of § 3285(d). The Government disclaims this ground for upholding the respondent's conviction, as indeed it must, in light of the unambiguous legislative history showing that the excise tax applies only to one who is 'engaged in the business of accepting wagers' as a 'principal * * * on his own account.' [FN15] In this instance, that means the banker, as the Government concedes.

We hold, therefore, that the occupational tax imposed by § 3290 does not apply to this respondent as a pick-up man, and that the judgment below must accordingly be affirmed.

Affirmed.

Mr. Justice WHITTAKER took no part in the consideration or decision of this case.

Mr. Justice BURTON, dissenting.

For the reasons stated in Sagonias v. United States, 5 Cir., 223 F.2d 146, I believe that the respondent pickup man was 'engaged in receiving wagers for and on behalf' of the banker, within the meaning of §§ 3290 and 3291(a)(3), and therefore was required to pay the occupational tax and to register not only his name and place of residence, but that of the banker.

The language of § 3290 does not limit the occupational tax to persons 'accepting wagers' in a contractual sense. Instead, it imposes the tax on 'each person * * * who is engaged in receiving wagers for or on behalf of any person so liable (for the excise tax).' Those words readily include a pickup man for he is engaged in receiving for the banker the slips which provide the banker with the sole evidence of the wagers made.

The legislative history contains specific references that indicate that the section was to apply to bookmakers' agents or runners. [FN1] It shows that the occupational tax was enacted not only as a revenue measure on its own account, but as a measure to help enforce the much larger excise tax placed by § 3285 upon the principal operator of the gambling enterprise. [FN2] To this end, § 3291(a)(1) and (3) requires each person who is subject to the occupational tax to register not only his own name and place of residence, but also that of the person for whom he is receiving wagers. Registration of the pickup man aids the Government in tracking these gambling operations to their headquarters and is essential to the enforcement of the excise tax. Since the 'receiving wagers' phrase in the registration provisions includes the pickup man, it must have the same meaning in the identical provisions imposing the occupational tax.

Furthermore, the administrative interpretation of § 3290 is significant. Since the enactment of the section in 1951, there has been in effect the following explanation of its scope in Treasury Regulations 132:

> 'Example (2). B operates a numbers game. He has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, news dealers, etc., to receive wagers from the public on his behalf. B also employs a person to collect from his agents the wagers received on his behalf.
>
> 'B, his ten agents, and the employee who collects the wagers received on his behalf are each liable for the special tax.' (Emphasis supplied.) 26 CFR, 1957 Cum. Pocket Supp., § 325.41.

This regulation should not be disregarded unless shown to be plainly inconsistent with the statute. Commissioner of Internal Revenue v. Wheeler, 324 U.S. 542, 547, 65 S.Ct. 799, 802, 89 L.Ed. 1166; Brewster v. Gage, 280 U.S. 327, 336, 50 S.Ct. 115, 117, 74 L.Ed. 457. Moreover, Congress re-enacted § 3290 in 1954 as 26 U.S.C. (Supp. II) § 4411, 26 U.S.C.A. § 4411. It thus impliedly accepted this established interpretation of the scope of the section. Corn Products Refining Co. v. Commissioner of Internal Revenue, 350 U.S. 46, 53, 76 S.Ct. 20, 24, 100 L.Ed. 29; Helvering v. Winmill, 305 U.S. 79, 83, 59 S.Ct. 45, 46, 83 L. Ed. 52.

Footnotes:

Majority opinion:

FN1. 'Subchapter A--Tax on Wagers

§ 3285. Tax

'(a) Wagers. There shall be imposed on wagers, as defined in subsection (b), an excise tax equal to 10 per centum of the amount thereof.

'(b) Definitions. For the purposes of this chapter--

'(1) The term 'wager' means (A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and (C) any wager placed in a lottery conducted for profit.

'(2) The term 'lottery' includes the numbers game * * *.

'(d) Persons liable for tax. Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery.

'Subchapter B--Occupational Tax

§ 3290. Tax

'A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable.

§ 3291. Registration

'(a) Each person required to pay a special tax under this subchapter shall register with the collector of the district--

'(1) his name and place of residence;

'(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

'(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the

name and place of residence of each such person.

§ 3294. Penalties

'(a) Failure to pay tax. Any person who does any act which makes him liable for special tax under this subchapter, without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.' 65 Stat. 529, 530, 26 U.S.C. §§ 3285--3294, 26 U.S.C.A. §§ 3285--3294.

FN2. The pick-up man collects the 'yellow' copy. The 'tissue' copy is given to the player when he places his bet, and the 'white' copy is retained by the writer.

FN3. 137 F.Supp. 816.

FN4. See note 1, supra.

FN5. That the 'placing' and 'receiving' of a wager should be regarded as simply complementing one another is recognized by Treasury Regulations 132, § 325.24(a) of which states:

'* * * Any wager or contribution received by an agent or employee on behalf of such person (one in the business of accepting wagers or operating a wagering pool or lottery) shall be considered to have been accepted by and placed with such person.' 26 CFR, 1957 Cum. Pocket Supp., § 325.24(a).

FN6. Indeed, the information filed against the respondent, which charged him with failing to pay the § 3290 occupational tax, alleged that he 'did accept,' not that he 'did receive,' wagers. 137 F.Supp., at page 817, note 1.

FN7. See note 1, supra.

FN8. H.R.Rep. No. 586, 82d Cong., 1st Sess. 60; S.Rep. No. 781, 82d Cong., 1st Sess. 118 (1951).

FN9. We do not consider as illuminating, on the issue before us, the statement in the House and Senate Reports cited in note 8, supra, to the effect that 'Enforcement of a tax on wagers frequently will necessitate the tracing of transactions through complex business relationships, thus requiring the identification of the various steps involved.' This general statement, not necessarily referring to the numbers game or to mere delivery systems, as distinguished from arrangements for the 'lay-off' of bets by gambling principals, is not helpful in interpreting § 3290 in relation to the numbers game and 'pick-up men.' Cf. Federal Communications Commission v. Columbia Broadcasting System of Calif., Inc., 311 U.S. 132, 136, 61 S.Ct. 152, 153, 85 L.Ed. 87. We think the same is true of the statements of Representative Reed, 97 Cong.Rec. 6896, and of Senator Kefauver, 97 Cong.Rec. 12231--12232, relied on by the Government. The significance of Senator Kefauver's statement is further limited by the fact that he was an opponent of the bill. See Mastro Plastics Corp. v. National Labor Relations Board, 350 U.S. 270, 288, 76 S.Ct. 349, 360, 100 L.Ed. 309.

FN10. See 97 Cong.Rec. 6892, 12236, referred to in United States v. Kahriger, 345 U.S. 22, 27, note 3, 73 S. Ct. 510, 512, 97 L.Ed. 754.

FN11. Treas.Reg. 132, § 325.41, Example 2 (26 CFR, 1957 Cum. Pocket Supp.), which was issued on November 1, 1951 (16 Fed.Reg. 11211, 11222), provides as follows:

'B operates a numbers game. He has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, newsdealers, etc., to receive wagers from the public on his behalf. B also employs a person to collect from his agents the wagers received on his behalf.

'B, his ten agents, and the employee who collects the wagers received on his behalf are each liable for the special tax.'

FN12. Apart from this, the force of this Treasury Regulations as an aid to the interpretation of the statute is impaired by its own internal inconsistency. Thus, while Example 2 of that regulation purports to make the pick-up man liable for the § 3290 occupational tax, Example 1 of the same regulation provides that 'a secretary and bookkeeper' of one 'engaged in the business of accepting horse race bets' are not liable for the occupational tax 'unless they also receive wagers' for the person so engaged in business, although those who 'receive wagers by telephone' are so liable. Thus in this instance a distinction seems to be drawn between the 'acceptance' of the wager, and its 'receipt' for recording purposes. But if this be proper, it is not apparent why the same distinction is not also valid between a writer, who 'accepts' or 'receives' a bet from a numbers player, and a pick-up man, who simply 'receives' a copy of the slips on which the writer has recorded the bet, and passes it along to the banker.

FN13. See note 11, supra.

FN14. See the dissenting judge's opinion below, 236 F.2d 182, 185--186. The sufficiency of the instructions to the jury in Daley apparently was not challenged on appeal. In any event, the Daley case was not concerned with a pick-up man, nor was the legislative history quoted, 354 U.S. 356, 77 S.Ct. at page 1142, supra, brought to the court's attention. The court in the Sagonias case, supra, which accepted the Government's contention as to the meaning of 'receiving wagers,' rejected the construction of the statute embodied in the instructions to the jury quoted in Daley.

FN15. See 354 U.S. 356, 77 S.Ct. 1142, supra.

Dissent:

FN1. H.R.Rep. No. 586, 82d Cong., 1st Sess. 56; S.Rep. No. 781, 82d Cong., 1st Sess. 114; 97 Cong.Rec. 6896 (Representative Reed); id., at 12231--12232 (Senator Kefauver). In this connection, it should be noted that the opinion of the court below states that 'The 'numbers banker', even as bankers and brokers in reputable commerce, employs salaried runners and messengers. These couriers are called 'pick-up men.'' (Emphasis supplied.) 236 F.2d 182, 184.

FN2. H.R.Rep. No. 586, 82d Cong., 1st Sess. 60; S.Rep. No. 781, 82d Cong., 1st Sess. 118.

Sec. 7701. - Definitions

(a)

When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof -

(1) Person

The term ''person'' shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) Partnership and partner

The term ''partnership'' includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term ''partner'' includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) Corporation

The term ''corporation'' includes associations, joint-stock companies, and insurance companies.

(4) Domestic

The term ''domestic'' when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

(5) Foreign

The term ''foreign'' when applied to a corporation or partnership means a corporation or partnership which is

not domestic.

(6) Fiduciary

The term ''fiduciary'' means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) Stock

The term ''stock'' includes shares in an association, joint-stock company, or insurance company.

(8) Shareholder

The term ''shareholder'' includes a member in an association, joint-stock company, or insurance company.

(9) United States

The term ''United States'' when used in a geographical sense includes only the States and the District of Columbia.

(10) State

The term ''State'' shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) Secretary of the Treasury and Secretary

(A) Secretary of the Treasury

The term ''Secretary of the Treasury'' means the Secretary of the Treasury, personally, and shall not include any delegate of his.

(B) Secretary

The term ''Secretary'' means the Secretary of the Treasury or his delegate.

(12) Delegate

(A) In general

The term ''or his delegate'' -

(i)

when used with reference to the Secretary of the Treasury, means any officer, employee, or agency of the Treasury Department duly authorized by the

Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context; and

(ii)

when used with reference to any other official of the United States, shall be similarly construed.

(B) Performance of certain functions in Guam or American Samoa

The term ''delegate,'' in relation to the performance of functions in Guam or American Samoa with respect to the taxes imposed by chapters 1, 2, and 21, also includes any officer or employee of any other department or agency of the United States, or of any possession thereof, duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform such functions.

(13) Commissioner

The term ''Commissioner'' means the Commissioner of Internal Revenue.

(14) Taxpayer

The term ''taxpayer'' means any person subject to any internal revenue tax.

(15) Military or naval forces and armed forces of the United States

The term ''military or naval forces of the United States'' and the term ''Armed Forces of the United States'' each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent

The term ''withholding agent'' means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

(17) Husband and wife

As used in sections 152(b)(4), 682, and 2516, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term ''wife'' shall be read ''former wife'' and the term ''husband'' shall be read ''former husband''; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term ''husband'' shall be read ''wife'' and the term ''wife'' shall be read ''husband.''

(18) International organization

The term ''international organization'' means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f).

(19) Domestic building and loan association

The term ''domestic building and loan association'' means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association -

(A)

which either

(i)

is an insured institution within the meaning of section 401(a) [1] of the National Housing Act (12 U.S.C., sec. 1724(a)), or

(ii)

is subject by law to supervision and examination by State or Federal authority having supervision over such associations;

(B)

the business of which consists principally of acquiring the savings of the public and investing in loans; and

(C)

at least 60 percent of the amount of the total assets of which (at the close of the taxable year) consists of -

(i)

cash,

(ii)

obligations of the United States or of a State or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a State or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103,

(iii)

certificates of deposit in, or obligations of, a corporation organized under a State law which specifically authorizes such corporation to insure the deposits or share accounts of member associations,

(iv)

loans secured by a deposit or share of a member,

(v)

loans (including redeemable ground rents, as defined in section 1055) secured by an interest in real property which is (or, from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis,

(vi)

loans secured by an interest in real property located within an urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans

made for the improvement of any such real property,

(vii)

loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities,

(viii)

property acquired through the liquidation of defaulted loans described in clause (v), (vi), or (vii),

(ix)

loans made for the payment of expenses of college or university education or vocational training, in accordance with such regulations as may be prescribed by the Secretary,

(x)

property used by the association in the conduct of the business described in subparagraph (B), and

(xi)

any regular or residual interest in a REMIC, and any regular interest in a FASIT, but only in the proportion which the assets of such REMIC or FASIT consist of property described in any of the preceding clauses of this subparagraph; except that if 95 percent or more of the assets of such REMIC or FASIT are assets described in clauses (i) through (x), the entire interest in the REMIC or FASIT shall qualify.

At the election of the taxpayer, the percentage specified in this subparagraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year, computed under regulations prescribed by the Secretary. For purposes of clause (v), if a multifamily structure securing a loan is used in part for nonresidential purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds 80 percent of the property's planned use (determined as of the time the loan is made). For purposes of clause (v), loans made to finance the

acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if, under regulations prescribed by the Secretary, there is reasonable assurance that the property will become residential real property within a period of 3 years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such 3-year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).

(20) Employee

For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, and for purposes of applying section 125 with respect to cafeteria plans, the term ''employee'' shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(21) Levy

The term ''levy'' includes the power of distraint and seizure by any means.

(22) Attorney General

The term ''Attorney General'' means the Attorney General of the United States.

(23) Taxable year

The term ''taxable year'' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. ''Taxable year'' means, in the case of a return

made for a fractional part of a year under the provisions of subtitle A or under regulations prescribed by the Secretary, the period for which such return is made.

(24) Fiscal year

The term ''fiscal year'' means an accounting period of 12 months ending on the last day of any month other than December.

(25) Paid or incurred, paid or accrued

The terms ''paid or incurred'' and ''paid or accrued'' shall be construed according to the method of accounting upon the basis of which the taxable income is computed under subtitle A.

(26) Trade or business

The term ''trade or business'' includes the performance of the functions of a public office.

(27) Tax Court

The term ''Tax Court'' means the United States Tax Court.

(28) Other terms

Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) Internal Revenue Code

The term ''Internal Revenue Code of 1986'' means this title, and the term ''Internal Revenue Code of 1939'' means the Internal Revenue Code enacted February 10, 1939, as amended.

(30) United States person

The term ''United States person'' means -

(A)

a citizen or resident of the United States,

(B)

a domestic partnership,

(C)

a domestic corporation,

(D)

any estate (other than a foreign estate, within the meaning of paragraph (31)), and

(E)

any trust if -

(i)

a court within the United States is able to exercise primary supervision over the administration of the trust, and

(ii)

one or more United States persons have the authority to control all substantial decisions of the trust.

(31) Foreign estate or trust

(A) Foreign estate

The term ''foreign estate'' means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(B) Foreign trust

The term ''foreign trust'' means any trust other than a trust described in subparagraph (E) of paragraph (30).

(32) Cooperative bank

The term ''cooperative bank'' means an institution without capital stock organized and operated for mutual purposes and without profit, which -

(A)

either -

(i)

is an insured institution within the meaning of section 401(a) [2] of the National Housing Act (12

U.S.C., sec. 1724(a)), or

(ii)

is subject by law to supervision and examination by State or Federal authority having supervision over such institutions, and

(B)

meets the requirements of subparagraphs (B) and (C) of paragraph (19) of this subsection (relating to definition of domestic building and loan association).

In determining whether an institution meets the requirements referred to in subparagraph (B) of this paragraph, any reference to an association or to a domestic building and loan association contained in paragraph (19) shall be deemed to be a reference to such institution.

(33) Regulated public utility

The term ''regulated public utility'' means -

(A)

A corporation engaged in the furnishing or sale of -

(i)

electric energy, gas, water, or sewerage disposal services, or

(ii)

transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii)

transportation (not included in clause (ii)) by motor vehicle - if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B)

A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission.

(C)

A corporation engaged as a common carrier

(i)

in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Surface Transportation Board, or

(ii)

in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, if subject to the jurisdiction of the Federal Energy Regulatory Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D)

A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E)

A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Secretary of Transportation.

(F)

A corporation engaged in the furnishing or sale of transportation by a water carrier subject to jurisdiction under subchapter II of chapter 135 of title 49.

(G)

A rail carrier subject to part A of subtitle IV of title 49, if

(i)

substantially all of its railroad properties have been

leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954,

(ii)

each lease is for a term of more than 20 years, and

(iii)

at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H)

A common parent corporation which is a common carrier by railroad subject to part A of subtitle IV of title 49 if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term ''regulated public utility'' does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that

(i)

its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and

(ii)

the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

(34)

Repealed. Pub. L. 98-369, div. A, title IV, Sec. 4112 (b)(11), July 18, 1984, 98 Stat. 792)

(35) Enrolled actuary

The term ''enrolled actuary'' means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974.

(36) Income tax return preparer

(A) In general

The term ''income tax return preparer'' means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by subtitle A or any claim for refund of tax imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) Exceptions

A person shall not be an ''income tax return preparer'' merely because such person -

(i)

furnishes typing, reproducing, or other mechanical assistance,

(ii)

prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii)

prepares as a fiduciary a return or claim for refund for any person, or

(iv)

prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

(37) Individual retirement plan

The term ''individual retirement plan'' means -

(A)

an individual retirement account described in section 408(a), and

(B)

an individual retirement annuity described in section 408(b).

(38) Joint return

The term ''joint return'' means a single return made jointly under section 6013 by a husband and wife.

(39) Persons residing outside United States

If any citizen or resident of the United States does not reside in (and is not found in) any United States judicial district, such citizen or resident shall be treated as residing in the District of Columbia for purposes of any provision of this title relating to -

(A)

jurisdiction of courts, or

(B)

enforcement of summons.

(40) Indian tribal government

(A) In general

The term ''Indian tribal government'' means the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions.

(B) Special rule for Alaska Natives

No determination under subparagraph (A) with respect to Alaska Natives shall grant or defer any status or powers other than those enumerated in section 7871. Nothing in the Indian Tribal Governmental Tax Status Act of 1982, or in the amendments made thereby, shall validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(41) TIN

The term ''TIN'' means the identifying number assigned to a person under section 6109.

(42) Substituted basis property

The term ''substituted basis property'' means property which is -

(A)

transferred basis property, or

(B)

exchanged basis property.

(43) Transferred basis property

The term ''transferred basis property'' means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property

The term ''exchanged basis property'' means property

having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction

The term ''nonrecognition transaction'' means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A.

(46) Determination of whether there is a collective bargaining agreement

In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term ''employee representatives'' shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers.

(b) Definition of resident alien and nonresident alien

(1) In general

For purposes of this title (other than subtitle B) -

(A) Resident alien

An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence

Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test

Such individual meets the substantial presence test of paragraph (3).

(iii) First year election

Such individual makes the election provided in paragraph (4).

(B) Nonresident alien

An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) Special rules for first and last year of residency

(A) First year of residency

(i) In general

If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) Residency starting date for individuals lawfully admitted for permanent residence

In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test

In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(iv) Residency starting date for individuals making first year election

In the case of an individual who makes the election provided by paragraph (4) with respect to any calendar year, the residency starting date shall be

the 1st day during such calendar year on which the individual is treated as a resident of the United States under that paragraph.

(B) Last year of residency

An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if -

(i)

such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii)

during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii)

the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded

(i) In general

For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded

Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test

(A) In general

Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the ''current year'') if -

(i)

such individual was present in the United States on at least 31 days during the calendar year, and

(ii)

the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days: The applicable In the case of days in: multiplier is: Current year 1 1st preceding year 1/3 2nd preceding year 1/6

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established

An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if -

(i)

such individual is present in the United States on fewer than 183 days during the current year, and

(ii)

it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases

Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year -

(i)

such individual had an application for adjustment of status pending, or

(ii)

such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions

An individual shall not be treated as being present in the United States on any day if -

(i)

such individual is an exempt individual for such day, or

(ii)

such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) First -year election

(A)

An alien individual shall be deemed to meet the requirements of this subparagraph if such individual -

(i)

is not a resident of the United States under clause (i) or (ii) of paragraph (1)(A) with respect to a calendar year (hereinafter referred to as the ''election year''),

(ii)

was not a resident of the United States under paragraph (1)(A) with respect to the calendar year immediately preceding the election year,

(iii)

is a resident of the United States under clause (ii) of paragraph (1)(A) with respect to the calendar year immediately following the election year, and

(iv)

is both -

(I)

present in the United States for a period of at least 31 consecutive days in the election year, and

(II)

present in the United States during the period beginning with the first day of such 31-day period and ending with the last day of the election year (hereinafter referred to as the ''testing period'') for a number of days equal to or exceeding 75 percent of the number of days in the testing period (provided that an individual shall be treated for purposes of this subclause as present in the United States for a number of days during the testing period not exceeding 5 days in the aggregate, notwithstanding his absence from the United States on such days).

(B)

An alien individual who meets the requirements of subparagraph (A) shall, if he so elects, be treated as a resident of the United States with respect to the election year.

(C)

An alien individual who makes the election provided by subparagraph (B) shall be treated as a resident of the United States for the portion of the election year which begins on the 1st day of the earliest testing period during such year with respect to which the individual meets the requirements of clause (iv) of subparagraph (A).

(D)

The rules of subparagraph (D)(i) of paragraph (3) shall apply for purposes of determining an individual's presence in the United States under this paragraph.

(E)

An election under subparagraph (B) shall be made on the individual's tax return for the election year, provided that such election may not be made before the individual has met the substantial presence test of paragraph (3) with respect to the calendar year immediately following the election year.

(F)

An election once made under subparagraph (B) remains in effect for the election year, unless revoked with the consent of the Secretary.

(5) Exempt individual defined

For purposes of this subsection -

(A) In general

An individual is an exempt individual for any day if, for such day, such individual is -

(i)

a foreign government-related individual,

(ii)

a teacher or trainee,

(iii)

a student, or

(iv)

a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274(l)(1)(B).

(B) Foreign government-related individual

The term ''foreign government-related individual'' means any individual temporarily present in the United States by reason of -

(i)

diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

(ii)

being a full-time employee of an international organization, or

(iii)

being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee

The term ''teacher or trainee'' means any individual -

(i)

who is temporarily present in the United States under subparagraph (J) or (Q) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

(ii)

who substantially complies with the requirements for being so present.

(D) Student

The term ''student'' means any individual -

(i)

who is temporarily present in the United States -

(I)

under subparagraph (F) or (M) of section 101 (15) of the Immigration and Nationality Act, or

(II)

as a student under subparagraph (J) or (Q) of such section 101(15), and (ii) who substantially complies with the requirements for being so present.

(E) Special rules for teachers, trainees, and students

(i) Limitation on teachers and trainees

An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceding 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A). In the case of an individual all of whose compensation is described in section 872(b) (3), the preceding sentence shall be applied by substituting ''4 calendar years'' for ''2 calendar years''.

(ii) Limitation on students

For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual

does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

(6) Lawful permanent resident

For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if -

(A)

such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B)

such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

(7) Presence in the United States

For purposes of this subsection -

(A) In general

Except as provided in subparagraph (B), (C), or (D), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) Commuters from Canada or Mexico

If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points

If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(D) Crew members temporarily present

An individual who is temporarily present in the

United States on any day as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States shall not be treated as present in the United States on such day unless such individual otherwise engages in any trade or business in the United States on such day.

(8) Annual statements

The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(9) Taxable year

(A) In general

For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer

If -

(i)

an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii)

after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(10) Coordination with section 877

If -

(A)

an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the ''initial residency period''), and

(B)

such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b). The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Includes and including

The terms ''includes'' and ''including'' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico

Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc.

For purposes of chapter 1 -

(1) In general

A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not -

(A)

the service recipient is in physical possession of the property,

(B)

the service recipient controls the property,

(C)

the service recipient has a significant economic or possessory interest in the property,

(D)

the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E)

the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F)

the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements

An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities

(A) In general

Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient -

(i)

with respect to -

(I)

the operation of a qualified solid waste disposal facility,

(II)

the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

(III)

the operation of a water treatment works facility, and

(ii)

which purports to be a service contract,

shall be treated as a service contract.

(B) Qualified solid waste disposal facility

For purposes of subparagraph (A), the term ''qualified solid waste disposal facility'' means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

(C) Cogeneration facility

For purposes of subparagraph (A), the term ''cogeneration facility'' means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility

For purposes of subparagraph (A), the term ''alternative energy facility'' means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility

For purposes of subparagraph (A), the term ''water treatment works facility'' means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

(4) Paragraph (3) not to apply in certain cases

(A) In general

Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, or water treatment works facility used under a contract or arrangement if -

(i)

the service recipient (or a related entity) operates such facility,

(ii)

the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

(iii)

the service recipient (or a related entity) receives any significant financial benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

(iv)

the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

For purposes of this paragraph, the term ''related entity'' has the same meaning as when used in section 168(h).

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract

For purposes of subparagraph (A), there shall not be taken into account -

(i)

any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii)

any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events

(i) Temporary shut-downs, etc.

For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs

For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing

This subsection shall not apply to any property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B) (relating to low-income housing) if -

(A)

such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c), and

(B)

at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B)) (as in effect on the day before the date of the enactment of the Revenue Reconcilation [3] Act of 1990). ''Reconciliation''.

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection.

(f) Use of related persons or pass-thru entities

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with -

(1)

the linking of borrowing to investment, or

(2)

diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness

For purposes of subtitle A, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Motor vehicle operating leases

(1) In general

For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause -

(A)

such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

(B)

the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

(2) Qualified motor vehicle operating agreement defined

For purposes of this subsection -

(A) In general

The term ''qualified motor vehicle operating agreement'' means any agreement with respect to a motor vehicle (including a trailer) which meets the

requirements of subparagraphs (B), (C), and (D) of this paragraph.

(B) Minimum liability of lessor

An agreement meets the requirements of this subparagraph if under such agreement the sum of -

(i)

the amount the lessor is personally liable to repay, and

(ii)

the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under clause (ii) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(C) Certification by lessee; notice of tax ownership

An agreement meets the requirements of this subparagraph if such agreement contains a separate written statement separately signed by the lessee -

(i)

under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

(ii)

which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(D) Lessor must have no knowledge that certification is false

An agreement meets the requirements of this subparagraph if the lessor does not know that the certification described in subparagraph (C)(i) is false.

(3) Terminal rental adjustment clause defined

(A) In general

For purposes of this subsection, the term ''terminal rental adjustment clause'' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(B) Special rule for lessee dealers

The term ''terminal rental adjustment clause'' also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in subparagraph (A).

(i) Taxable mortgage pools

(1) Treated as separate corporations

A taxable mortgage pool shall be treated as a separate corporation which may not be treated as an includible corporation with any other corporation for purposes of section 1501.

(2) Taxable mortgage pool defined

For purposes of this title -

(A) In general

Except as otherwise provided in this paragraph, a taxable mortgage pool is any entity (other than a REMIC or a FASIT) if -

(i)

substantially all of the assets of such entity consists of debt obligations (or interests therein) and more than 50 percent of such debt obligations (or interests) consists of real estate mortgages (or interests therein),

(ii)

such entity is the obligor under debt obligations with 2 or more maturities, and

(iii)

under the terms of the debt obligations referred to in clause (ii) (or underlying arrangement), payments on such debt obligations bear a relationship to payments on the debt obligations (or interests) referred to in clause (i).

(B) Portion of entities treated as pools

Any portion of an entity which meets the definition of subparagraph (A) shall be treated as a taxable mortgage pool.

(C) Exception for domestic building and loan

Nothing in this subsection shall be construed to treat any domestic building and loan association (or portion thereof) as a taxable mortgage pool.

(D) Treatment of certain equity interests

To the extent provided in regulations, equity interest of varying classes which correspond to maturity classes of debt shall be treated as debt for purposes of this subsection.

(3) Treatment of certain REIT's

If -

(A)

a real estate investment trust is a taxable mortgage pool, or

(B)

a qualified REIT subsidiary (as defined in section 856(i)(2)) of a real estate investment trust is a taxable mortgage pool,

under regulations prescribed by the Secretary, adjustments similar to the adjustments provided in section 860E(d) shall apply to the shareholders of such real estate investment trust.

(j) Tax treatment of Federal Thrift Savings Fund

(1) In general

For purposes of this title -

(A)

the Thrift Savings Fund shall be treated as a trust described in section 401(a) which is exempt from taxation under section 501(a);

(B)

any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(C)

subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(e)(3), contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of subchapter III of chapter 84 of title 5, United States Code, and section 8351 of such title 5, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(2) Nondiscrimination requirements

Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) or to matching contributions (as described in section 401(m)), so long as it meets the requirements of this section.

(3) Coordination with Social Security Act

Paragraph (1) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term ''wages'' for the purposes of section 209 of the Social Security Act or section 3121(a) of this title.

(4) Definitions

For purposes of this subsection, the terms ''Member'', ''employee'', and ''Thrift Savings Fund'' shall have the same respective meanings as when used in subchapter III of chapter 84 of title 5, United States Code.

(5) Coordination with other provisions of law

No provision of law not contained in this title shall apply for purposes of determining the treatment under

this title of the Thrift Savings Fund or any contribution to, or distribution from, such Fund.

(k) Treatment of certain amounts paid to charity

In the case of any payment which, except for section 501 (b) of the Ethics in Government Act of 1978, might be made to any officer or employee of the Federal Government but which is made instead on behalf of such officer or employee to an organization described in section 170(c) -

(1)

such payment shall not be treated as received by such officer or employee for all purposes of this title and for all purposes of any tax law of a State or political subdivision thereof, and

(2)

no deduction shall be allowed under any provision of this title (or of any tax law of a State or political subdivision thereof) to such officer or employee by reason of having such payment made to such organization.

For purposes of this subsection, a Senator, a Representative in, or a Delegate or Resident Commissioner to, the Congress shall be treated as an officer or employee of the Federal Government.

(l) Regulations relating to conduit arrangements

The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title.

(m) Designation of contract markets

Any designation by the Commodity Futures Trading Commission of a contract market which could not have been made under the law in effect on the day before the date of the enactment of the Commodity Futures Modernization Act of 2000 shall apply for purposes of this title except to the extent provided in regulations prescribed by the Secretary.

(n) Cross references

(1) Other definitions For other definitions, see the following sections of Title 1

For other definitions, see the following sections of

Title 1 of the United States Code:

(1)

Singular as including plural, section 1.

(2)

Plural as including singular, section 1.

(3)

Masculine as including feminine, section 1.

(4)

Officer, section 1.

(5)

Oath as including affirmation, section 1.

(6)

County as including parish, section 2.

(7)

Vessel as including all means of water transportation, section 3.

(8)

Vehicle as including all means of land transportation, section 4.

(9)

Company or association as including successors and assigns, section 5.

(2) Effect of cross references For effect of cross references in this title, see section

For effect of cross references in this title, see section 7806(a)

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[1] See References in Text note below.

[2] See References in Text note below.

[3] So in original. Probably should be

Next

streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

Subdivision map. A map showing how a larger parcel of land is to be divided into smaller lots, and generally also showing the layout of streets, utilities, etc.

Subflow. Those waters which slowly find their way through sand and gravel constituting bed of a stream, or lands under or immediately adjacent to stream. Maricopa County Municipal Water Conservation Dist. No. 1 v. Southwest Cotton Co., 39 Ariz. 65, 4 P.2d 369, 380.

Subhastare /səbhæstériy/. Lat. In the civil law, to sell at public auction, which was done *sub hasta,* under a spear; to put or sell under the spear.

Subhastatio /səbhæstéysh(iy)ow/. Lat. In the civil law, a sale by public auction, which was done *under a spear,* fixed up at the place of sale as a public sign of it.

Subinfeudation /səbinfyuwdéyshən/. The system which the feudal tenants introduced of granting smaller estates out of those which they held of their lord, to be held of themselves as inferior lords. As this system was proceeding downward *ad infinitum,* and depriving the lords of their feudal profits, it was entirely suppressed by the statute *Quia Emptores,* 18 Edw. I, c. 1, and instead of it alienation in the modern sense was introduced, so that thenceforth the alienee held of the same chief lord and by the same services that his alienor before him held.

Subirrigate /səbihrəgèyt/. To irrigate below the surface, as by a system of underground porous pipes, or by natural percolation through the soil.

Subjacent support /səbjéysənt səpórt/. The right of land to be supported by the land which lies under it; distinguished from lateral (side) support. *See also* Support.

Subject. *Constitutional law.* One that owes allegiance to a sovereign and is governed by his laws. The natives of Great Britain are *subjects* of the British government. Men in free governments are subjects as well as *citizens;* as citizens they enjoy rights and franchises; as subjects they are bound to obey the laws. The term is little used, in this sense, in countries enjoying a republican form of government. Swiss Nat. Ins. Co. v. Miller, 267 U.S. 42, 45 S.Ct. 213, 214, 69 L.Ed. 504.

Legislation. The matter of public or private concern for which law is enacted. Thing legislated about or matters on which legislature operates to accomplish a definite object or objects reasonably related one to the other. Crouch v. Benet, 198 S.C. 185, 17 S.E.2d 320, 322. The matter or thing forming the groundwork of the act. McCombs v. Dallas County, Tex.Civ.App., 136 S.W.2d 975, 982.

The constitutions of several of the states require that every act of the legislature shall relate to but one *subject,* which shall be expressed in the title of the statute. But term "subject" within such constitutional provisions is to be given a broad and extensive meaning so as to allow legislature full scope to include in one act all matters having a logical or natural connection. Jaffee v. State, 76 Okl.Cr. 95, 134 P.2d 1027, 1032.

Subjection. The obligation of one or more persons to act at the discretion or according to the judgment and will of others.

Subject-matter. The subject, or matter presented for consideration; the thing in dispute; the right which one party claims as against the other, as the right to divorce; of ejectment; to recover money; to have foreclosure. Flower Hospital v. Hart, 178 Okl. 447, 62 P.2d 1248, 1252. Nature of cause of action, and of relief sought. In trusts, the *res* or the things themselves which are held in trust. Restatement, Second, Trusts, § 2.

Subject matter jurisdiction. Term refers to court's power to hear and determine cases of the general class or category to which proceedings in question belong; the power to deal with the general subject involved in the action. Standard Oil Co. v. Montecatini Edison S. p. A., D.C.Del., 342 F.Supp. 125, 129. *See also* Jurisdiction of the subject matter.

Subject to. Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. Homan v. Employers Reinsurance Corp., 345 Mo. 650, 136 S.W.2d 289, 302.

Sub judice /səb júwdəsiy/. Under or before a judge or court; under judicial consideration; undetermined.

Sublata causa tollitur effectus /səbléytə kózə tólətər əféktəs/. The cause being removed the effect ceases.

Sublata veneratione magistratuum, res publica ruit /səbléytə vènərèyshiyówniy mæjəstréytyuwəm, ríyz pəbləkə rúwət/. When respect for magistrates is taken away, the commonwealth falls.

Sublato fundamento cadit opus /səbléytow fəndəméntow kéydət ówpəs/. The foundation being removed, the superstructure falls.

Sublato principali, tollitur adjunctum /səbléytow prinsəpéyliy, tólətər əjəŋktəm/. When the principal is taken away, the incident is taken also.

Sublease. A lease executed by the lessee of land or premises to a third person, conveying the same interest which the lessee enjoys, but for a shorter term than that for which the lessee holds (as compared to assignment, where the lessee transfers the entire unexpired term of the leasehold to a third party). Transaction whereby tenant grants interests in leased premises less than his own, or reserves to himself reversionary interest in term. Ernst v. Conditt, 54 Tenn.App. 328, 390 S.W.2d 703, 707. *See also* Lease; Sandwich lease; Subtenant.

A lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease. U.C.C. § 2A-103(1)(w).

Subletting. *See also* Sublease.

Submerged lands. Land lying under water. Land lying oceanside of the tideland. People v. Hecker, 179 Cal.App.2d 823, 4 Cal.Rptr. 334, 341.

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TITLE 26 > Subtitle A

Subtitle A—Income Taxes

How Current is This?

Botta v. ***Scanlon***, 288 F.2d 504 (2nd Cir. 03/06/1961)

[1] UNITED STATES COURT OF APPEALS SECOND CIRCUIT.

[2] No. 236, Docket 26563.

[3] 1961.C02.40301 <http://www.versuslaw.com>; 288 F.2d 504

[4] decided: March 6, 1961.

[5] **MICHAEL *BOTTA*, ERNEST MONTAGNI AND SALVATORE SANTANIELLO, APPELLANTS,**
v.
THOMAS E. *SCANLON*, DISTRICT DIRECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF BROOKLYN, NEW YORK, APPELLEE.

[6] Author: Moore

[7] Before CLARK, MAGRUDER and MOORE, Circuit Judges.

[8] LEONARD P. MOORE, Circuit Judge.

[9] The plaintiffs, Michael ***Botta***, Ernest Montagni and Salvatore Santaniello appeal from an order dismissing their complaint against the District Director of Internal Revenue for the District of Brooklyn, New York (the Director). In substance the complaint alleged that Thru-County Plumbing and Heating Co., Inc. (Thru-County), a New York corporation, was adjudicated a bankrupt on February 14, 1958; that Thru-County owed to Internal Revenue Service (IRS) withholding and employment taxes amounting to some $9,070.16 for which a claim had been filed by IRS in the bankruptcy proceedings; that during the period in which these taxes became payable ***Botta*** was Vice-President of ThruCounty, Santaniello was Secretary, and Montagni held no office; that none of the plaintiffs "was charged with the duty of preparing, signing and filing" withholding or employment tax returns for Thru-County or of paying said taxes; that the Director made a 100% penalty assessment against plaintiffs and filed tax liens against them and their property; and that such action is causing "irreparable harm and damage" for which they have no adequate remedy at law.

[10] The relief demanded is that the penalty assessments be declared void; that the Director be enjoined from collecting such assessments and that the tax liens and notices of levy be cancelled. The Director challenges plaintiffs' right to enjoin collection and relies on Section 7421 of the Internal Revenue Code of 1954 (the Code) (26 U.S.C.A. § 7421)[*fn1] as prohibiting suits to restrain collection and argues that the exceptions therein specified are not applicable in this case.

[11] The district court [187 F. Supp. 857] held that the "ninety day letters" requirement did not apply to assessments under Subtitle C of the Code; that Section 7421 bars all actions to restrain collection except "where (a) the tax assessment is an illegal exaction in the guise of a tax and (b) there are present 'special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence.' Miller v. Standard Nut Margarine Co. of Florida, 1932, 284 U.S. 498, 509, 52 S. Ct. 260, 263, 76 L. Ed. 422." The court concluded that "to come within this judicial exception to the statute plaintiffs must meet both of the above requirements" and that the bare allegation of "irreparable harm" is inadequate to invoke equity jurisdiction.

[12] This so-called "judicial exception" apparently emanates from the Nut Margarine case, supra. However, it would be very questionable reasoning to conclude from a single case decided upon the facts therein presented that it expressed the only exception which might be required to make the injunctive statute compatible with more underlying constitutional principles. Certainly there are other and different "special and extraordinary" circumstances than a tax imposed under an inapplicable oleomargarine statute. Thus, the injunction of the Fifth Amendment relating to deprivation of property without due process of law may well be entitled to priority consideration under appropriate circumstances. Moreover, even the collection of taxes should be exacted only from persons upon whom a tax liability is imposed by some statute.

[13] Upon what basis is the assessment here made? The applicable sections of the Code creating the asserted liability are §§ 6671 and 6672. Paraphrased briefly, any person [Thru-County] required to collect, but who wilfully fails to collect and pay over, a tax shall be liable to a penalty equal to the tax, to wit, 100%. Thru-County may be regarded as the primary taxpayer but it is bankrupt. However, a "person" includes an officer or employee of a corporation who "is under a duty to perform the act in respect of which the violation occurs" (Sections 6671(b), 6672, Code). Not every "officer" or "employee" of a corporation is subject to the "penalty" but only if he be "under a duty to perform the act," namely, be responsible for making the deductions and payments. The assessment provisions relating to a "tax" also refer to "penalties."

[14] Against this background should be projected the case of the plaintiff Montagni who, according to the complaint, was not an officer and was not charged with any duty of preparing, signing and filing such tax returns or paying such taxes. A fair reading of the relevant sections shows an intent to impose a "penalty." The only "person" liable for such penalty is the "person required to collect, truthfully account for, or pay over any tax * * *." As additional proof that the penalty is addressed to specific individuals, it applies solely to those who "wilfully" fail to collect and/or pay over. Where a person in no manner obligated

to collect or pay over the tax, any assessment against him or seizure of his property to pay a penalty imposed against another would scarcely seem consistent with that protection, whether it be called equity, due process or merely common sense justice, which our system of jurisprudence purportedly bestows upon our citizens.

[15] The basis for the decision below was the injunctive bar of Section 7421. We had rather recently recognized that "it has long been settled that this general prohibition is subject to exception in the case of an individual taxpayer against a particular collector where the tax is clearly illegal or other special circumstances of an unusual character make an appeal to equitable remedies appropriate." National Foundry Co. of N. Y. v. Director of Int. Rev., 2 Cir., 1956, 229 F.2d 149, 151.

[16] In Communist Party, U.S.A. v. Moysey, D.C.S.D. N.Y. 1956, 141 F. Supp. 332, the trial judge in an action to restrain the collection of a tax assessed against the plaintiff therein made a comprehensive and careful analysis of the situations and categories which he classified as exceptions to the general rule, namely:

[17] "(a) Suits to enjoin collection of taxes which are not due from the plaintiff but, in fact, are due farm others. For example, Raffaele v. Granger, 3 Cir., 1952, 196 F.2d 620, 622, in which the Court enjoined the distraint against a bank account in the joint names of husband and wife "'as tenants by the entireties"' when the tax was due solely from the husband.

[18] "(b) Cases in which plaintiff definitely showed that the taxes sought to be collected were 'probably' not validly due. For example, Midwest Haulers, Inc. v. Brady, 6 Cir., 1942, 128 F.2d 496 and John M. Hirst & Co. v. Gentsch, 6 Cir., 1943, 133 F.2d 247.

[19] "(c) Cases in which a penalty was involved. For example, Hill v. Wallace, 259 U.S. 44, 42 S. Ct. 453, 66 L. Ed. 822; Lipke v. Lederer, 259 U.S. 557, 42 S. Ct. 549, 66 L. Ed. 1061; Regal Drug Corporation v. Wardell, 260 U.S. 386, 43 S. Ct. 152, 67 L. Ed. 318; Allen v. Regents of the University System of Georgia, 304 U.S. 439, 58 S. Ct. 980, 82 L. Ed. 1448.

[20] "(d) Cases in which it was definitely demonstrated that it was not proper to levy the tax on the commodity in question, such as Miller v. Standard Nut Margarine Company of Florida, 284 U.S. 498, 52 S. Ct. 260, 76 L. Ed. 422.

[21] "(e) Cases based upon tax assessments fraudulently obtained by the tax collector by coercion. For example, Mitsukiyo Yoshimura v. Alsup, 9 Cir., 1948, 167 F.2d 104" (141 F. Supp. at page 338).

[22] In the present case, if any of the plaintiffs are not subject to any tax liability, such plaintiff might well be within the exception stated in 9 Mertens, Law of Federal Income Taxation, § 49.213, Chap. 49, p. 226 as follows:

[23] "As an exception to the general rule, the courts have entertained injunction suits by third parties to prevent the taking of their property to satisfy the tax liability of another" [citing many cases in support of this principle].

[24] As said by the court in Raffaele v. Granger, 3 Cir., 1952, 196 F.2d 620, 623:

[25] "This court and others have consistently held that Section 3653(a) of Title 26 does not prevent judicial interposition to prevent a Collector from taking the property of one person to satisfy the tax obligation of another."

[26] And in Rothensies v. Ullman, 3 Cir., 1940, 110 F.2d 590, 592:

[27] "We think that the section of the Internal Revenue Code which we have quoted was not intended to deprive the courts of jurisdiction to restrain revenue officers from illegally collecting taxes out of property which does not belong to the person indebted to the government."

[28] The rationale behind Section 7421 and the exceptions thereto cannot be better or more succinctly stated than by the court in Adler v. Nicholas, 10 Cir., 1948, 166 F.2d 674, 678, in a case wherein the plaintiff and his wife brought an action against the Collector of Internal Revenue to determine title to property against which the Collector had issued a warrant of distraint. The trial court dismissed the complaint against the Collector, holding that it was without jurisdiction. The Court of Appeals reversed with instructions to permit the pleading to be recast. The court said:

[29] The reason why a taxpayer may not ordinarily challenge the validity of a tax claim asserted against him by the Government by an action to enjoin its collection is founded upon public policy and the necessity of prompt payment of such taxes in order to enable the Government to properly function. In order, however, to protect the rights of the individual, Congress has provided a means for adjudicating such rights. Thus, Congress has provided that one challenging the legality of a tax may pay it under protest and then institute an action in a court of competent jurisdiction to recover the amount so paid. Ordinarily this is the taxpayer's sole remedy. It has long been recognized that this satisfies the constitutional requirements of due process.

[30] It is equally well setted [sic] that the Revenue laws relate only to taxpayers. No procedure is prescribed for a nontaxpayer where the Government seeks to levy on property belonging to him for the collection of another's tax, and no attempt has been made to annul the ordinary rights or remedies of a non-taxpayer in such cases. If the Government sought to levy on the property of A for a tax liability owing by B, A could not and would not be required to pay the tax under protest and then institute an action to recover the amount so paid. His remedy

would be to go into a court of competent jurisdiction and enjoin the Government from proceeding against his property."

[31] In Tomlinson v. Smith, 7 Cir., 1942, 128 F.2d 808, the plaintiff, a trustee suing to protect a mortgage lien, brought an action to restrain the Collector, who was seeking to collect Social Security taxes allegedly owed by members of a partnership, from distraining certain partnership property on which the plaintiff claimed a prior lien. The court affirmed an order granting an interlocutory injunction and noted the "distinction between suits instituted by taxpayers and non-taxpayers" (at page 811).

[32] We recognize, of course, the many cases which hold that a taxpayer against whom an assessment is made must pay the tax and bring an action to recover the payment. Thus, the amount of the tax, its legality or even constitutionality are not to be tested by injunctive action to restrain collection. Nor do "special and extraordinary" circumstances embrace financial hardship in making the payment. "The decided cases dealing with what constitutes irreparable injury are legion in number" (Stanton v. Machiz, D.C. Md. 1960, 183 F. Supp. 719, 726) but thus far plaintiffs here only plead an insufficient conclusory allegation.

[33] Whether this case would come within the "penalty" category and controlled by the cases cited in subparagraph (c) of Communist Party, U.S.A., supra, need not now be decided. The same conclusion is reached as to whether plaintiffs acted "willfully." This issue can be tested in any suit brought for a refund. For the present, it is sufficient to decide that plaintiffs should have an opportunity to replead if they so desire in an amended complaint (Conley v. Gibson, 1957, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80; Nagler v. Admiral Corp., 2 Cir., 1957, 248 F.2d 319). Plaintiffs may or may not be able to allege facts showing that Section 7421 is inapplicable to them. However, a reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for judicial review of this status before the appellation of "taxpayer" is bestowed upon them and their property is seized and sold. A fortiori is the case where the liability is asserted by way of a penalty for a willful act.

[34] The judgment should be modified to grant permission to serve an amended complaint and the case is remanded for this purpose.

[35] CLARK, Circuit Judge (concurring). I concur in the result reached by my brothers, but believe the exception for the granting of an injunction against the collection of a tax should be stated less broadly.

[36] "A showing of extraordinary and exceptional circumstances must be found in the complaint if an esca p is to be made from the prohibition of Section 7421, Internal Revenue Code." Holdeen v. Raterree, D.C.N.D.N.Y., 155 F. Supp. 509, 510, affirmed on opinion below, 2 Cir., 253 F.2d 428. The complaint before us makes no such showing. Indeed, it does not even allege that plaintiffs are unable to pay the amount of the assessments and then sue for

refunds. Paragraph 19 of the complaint states in conclusory fashion that plaintiffs are suffering and will continue to suffer "irreparable harm and damage," but this is insufficient to show the required "extraordinary and exceptional circumstances." Furthermore, mere hardship or difficulty in raising the amount of the tax is insufficient to justify the injunction. E. g., Matcovich v. Mickell, 9 Cir., 134 F.2d 837. On the other hand, an injunction has been granted to prevent destruction of a business, John M. Hirst & Co. v. Gentsch, 6 Cir., 133 F.2d 247; Midwest Haulers v. Brady, 6 Cir., 128 F.2d 496, or to prevent reduction of the taxpayer to a state of destitution, Long v. United States, D.C.S.D. Ala., 148 F. Supp. 758. While the cases are not all consistent on the degree of hardship that must be shown, plaintiffs have not qualified under even the most lenient test.

[37] The authorities relied on by my brothers deal principally with the proposition that a nontaxpayer may enjoin seizure of his property to pay taxes owed by another. These cases are not strictly applicable to the present case, since they involve "nontaxpayers" against whom the government was not asserting any liability. In the present case the government does assert liability against the plaintiffs. Somewhat closer to the present case are decisions enjoining collection of tax from alleged transferees, where the court has found that transferee liability was not properly imposed. Holland v. Nix, 5 Cir., 214 F.2d 317; Shelton v. Gill, 4 Cir., 202 F.2d 503. These cases, together with those relied upon by my brothers, indicate that a court will more readily find "extraordinary and exceptional circumstances" where the party seeking the injunction is not the primary taxpayer and where he makes a showing that he cannot be properly subjected to any derivative liability. The present complaint does not make a showing of such circumstances; but I am willing to join my brothers to permit the plaintiff to attempt to make such a showing, if he can, in an amended complaint.

Opinion Footnotes

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[38] *fn1 "(a) Tax. - Except as provided in sections 6212(a) and (c), and 6213(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

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LONG v. RASMUSSEN, Collector of Internal Revenue, et al.

(District Court, D. Montana. May 29, 1922.)

No. 97.

1. Internal revenue ⊂=28—Prima facie proof property was owned by claimant puts burden on collector to prove it belonged to taxpayer.

In a suit to enjoin the collector of internal revenue from selling property claimed by plaintiff under distraint to enforce taxes levied against another, evidence on behalf of plaintiff that the property comprised the furnishings of a hotel conducted by her, which was in her possession when distrained, was proof of her ownership and right of possession, which imposed on the defendant the burden to justify the seizure by a preponderance of evidence showing that the property belonged to the taxpayer.

2. Internal revenue ⊂=28—Evidence held to show property distrained did not belong to taxpayer.

In a suit to restrain the sale of property claimed by plaintiff for taxes and penalties assessed against another, where plaintiff had made a prima facie case of ownership and right to possession, evidence on behalf of the collector *held* insufficient to show that the property distrained was that of the taxpayer.

3. Evidence ⊂=99—Lists of property returned for taxes are generally inadmissible against other parties.

On the issue of ownership of personal property between a claimant of the property and the collector of internal revenue, who had distrained it as the property of a taxpayer, tax lists returned by the taxpayer to the assessor of local taxes, including the property in controversy, are generally incompetent as res inter alios acta.

4. Internal revenue ⊂=28—Threatened seizure of property, which would interrupt going business, may be enjoined.

An injunction may be issued to restrain the collector of internal revenue from seizing the property of plaintiff for the taxes owing by another, where such seizures threaten disruption of plaintiff's going business, resulting in the infliction of uncertain damages and irreparable injury.

5. United States ⊂=125—Suit to enjoin distraint by collector is not suit against United States.

A suit against the collector of internal revenue to enjoin sale by him under distraint proceedings of property claimed by plaintiff for taxes assessed against another is not a suit against the United States, but is against an individual who, as an officer in discharge of a discretionless ministerial duty, is committing trespass on plaintiff's property without authority.

6. Internal revenue ⊂=28—Statute against restraining collection of taxes applies only to suits by taxpayer.

Rev. St. § 3224 (Comp. St. § 5947), prohibiting suit to restrain the collection of any tax, applies to suits by taxpayers only, who are given a remedy by section 3226 (Comp. St. § 5949), and does not prohibit an injunction against sale under distraint of the property belonging to plaintiff to satisfy taxes assessed against another.

7. Internal revenue ⊂=28—Statute against restraining collection of taxes applies only to those within scope of revenue laws.

Rev. St. § 3224 (Comp. St. § 5947), prohibiting suits to enjoin the collection of taxes, applies only to persons and things within the scope of the revenue laws, and not to those without such scope.

8. Internal revenue ⊂=28—Prevention of replevin of property distrained does not prevent injunction against sale.

Rev. St. § 934 (Comp. St. § 1560), making irrepleviable property taken by an officer under authority of any revenue law, and making such prop-

erty in custody of law subject only to decrees of the courts of the United States, probably prevents replevin of property seized by the collector of internal revenue to satisfy taxes levied against one not the owner; but the owner of the property is left free to bring any other proper action to determine the ownership and possession of the property.

In Equity. Suit by Edna Long against C. A. Rasmussen, Collector of Internal Revenue for the District of Montana, and another. Decree rendered for plaintiff.

George F. Shelton, J. Bruce Kremer, L. P. Sanders, and Alf C. Kremer, all of Butte, Mont., for plaintiff.

John L. Slattery, U. S. Dist. Atty., of Helena, Mont., for defendants.

BOURQUIN, District Judge. Plaintiff alleges she owns and is entitled to possession of certain property distrained by defendant collector of internal revenue, to make certain "distilled spirits taxes and penalties" assessed against one Wise, and she seeks to enjoin threatened sale and to recover possession.

[1] The evidence in her behalf is that the property is the furnishings of a resort or hotel conducted by her, excepting an automatic organ is owned by her, and was in her possession when distrained by defendant. This is proof of plaintiff's ownership and right of possession, and imposes upon defendant the burden to justify the seizure by a preponderance of the evidence that Wise owns the property.

[2] To that end he presents ambiguous circumstances only, viz. that Wise or his wife has some interest in the hotel building; that during plaintiff's tenancy of the building, Wise once gave his address as at that hotel, had installed the automatic organ, and made payments upon it, and in 1917–1921 presented to the assessor of local taxes lists of property for taxation to Wise, including the hotel building and furnishings, which taxes were paid by him. These lists were admitted, subject to the anomalous objection that they be "taken only for what they are worth."

[3, 4] Being res inter alios acta, the better rule is that generally they are not competent evidence in actions involving title and ownership of property, and to which the list maker is not a party. In any event, the burden has not been sustained by defendant, and the finding is that at time of seizure and now plaintiff was and is owner and entitled to possession of the property. To dispose briefly of various suggestions, rather than contentions, the seizure threatening disruption of plaintiff's going business, infliction of uncertain damages, and irreparable injury, equity has jurisdiction, even as in like circumstances of wrongful attachment or execution, for that law affords no adequate remedy. See Watson v. Sutherland, 5 Wall. 79, 18 L. Ed. 580.

[5] The suit is not against the United States, but is against an individual who, as an officer of the United States in discharge of a discretionless ministerial duty, upon plaintiff's property is committing without authority, contrary to his duty, and in violation of the due process of the Constitution and the revenue laws of the United States, positive acts of trespass for which he is personally liable. See Philadelphia Co. v. Stimson, 223 U. S. 620, 32 Sup. Ct. 340, 56 L. Ed. 570;

Belknap v. Schild, 161 U. S. 18, 16 Sup. Ct. 443, 40 L. Ed. 599; U. S. v. Lee, 106 U. S. 219, 1 Sup. Ct. 240, 27 L. Ed. 171; Magruder v. Association, 219 Fed. 78, 135 C. C. A. 524. Congress has no power to grant, and has not assumed to grant, authority to the defendant collector to distrain the property of one person to make the taxes of another. Perhaps it could, were the property in possession of the taxpayer, which is not this case. See Sears v. Cottrell, 5 Mich. 253.

[6] Section 3224, R. S. (Comp. St. § 5947), that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court," applies to taxpayers only, and who, thus deprived of one remedy, are given another by section 3226, R. S. (Comp. St. § 5949), viz. an action to recover after taxes paid and repayment denied by the Commissioner. Nor are they limited to this statutory remedy, but, after taxes paid, they may have trespass or other action against the collector. See Erskine v. Hohnbach, 14 Wall. 616, 20 L. Ed. 745; De Lima v. Bidwell, 182 U. S. 179, 21 Sup. Ct. 743, 45 L. Ed. 1041; Pacific Co. v. U. S., 187 U. S. 453, 23 Sup. Ct. 154, 47 L. Ed. 253.

The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws. The instant suit is not to restrain assessment or collection of taxes of Wise, but is to enjoin trespass upon property of plaintiff, and against whom no assessment has been made, and of whom no collection is sought. Note, too, the taxes are not assessed against the property. This presents a widely different case than that wherein the person assessed, or whose property is assessed, seeks to restrain assessment or collection on the theory that he or it is exempt from taxation, or that for any reason the tax is illegal.

[7] The distinction between persons and things within the scope of the revenue laws and those without them is vital. See De Lima v. Bidwell, 182 U. S. 176, 179, 21 Sup. Ct. 743, 45 L. Ed. 1041. To the former only does section 3224 apply (see cases cited in Violette v. Walsh [D. C.] 272 Fed. 1016), and the well-understood exigencies of government and its revenues and their collection do not serve to extend it to the latter. It is a shield for official action, not a sword for private aggression. There is dictum to the contrary in Sheridan v. Allen, 153 Fed. 569, 82 C. C. A. 522, but it is neither supported by the case it cites nor by any other brought to attention.

[8] Markle v. Kirkendall (D. C.) 267 Fed. 500, tends to the conclusion herein. It is not improbable that section 934, R. S. (Comp. St. § 1560), wherein it provides that property taken by an officer "under authority of any revenue law" is "irrepleviable," is in "custody of law," and "subject only to the orders and decrees of the courts of the United States having jurisdiction thereof," contemplates the instant case. The collector assumed in good faith to distrain property he believes to be the taxpayer's. If he peaceably secures possession of it (for, if not the

taxpayer's, the owner may lawfully forcibly prevent), he is not bound to deliver it to any chance claimant, nor is he subject to be deprived of it by replevin before trial.

The nontaxpayer owner, however, is free to bring any other proper action, the court to determine title, ownership, and possession, the collector having no power to do so, and the property "subject only to the orders and decrees of the court," to be by the court disposed of as justice requires. See In re Fassett, 142 U. S. 486, 12 Sup. Ct. 295, 35 L. Ed. 1087; De Lima v. Bidwell, 182 U. S. 180, 21 Sup. Ct. 743, 45 L. Ed. 1041. And this is the course in respect to any property in custodia legis, aside from statute.

This trial demonstrating that plaintiff owns and is entitled to possession of the property, and that the defendant wrongfully seized it to make taxes owed by Wise, justice requires that the sale be enjoined and the possession restored to her.

Decree accordingly, and with costs.

UNITED STATES v. SUGARLAND INDUSTRIES.

(District Court, S. D. Texas, at Galveston. May 26, 1922.)

Nos. 1126–1131.

1. Shipping ⟸171—Bills of lading held to incorporate demurrage provisions of charter, so as to charge lien on cargo.

Bills of lading, two of which made the consignee or assigns liable for freight and demurrage as provided in the charter party, and the others of which stated freight and conditions were to be in accordance with the charter party, which took precedence of the bill of lading, were sufficient to embody the provisions of the charter party for demurrage into the bills of lading, so as to charge the cargo in the hands of the consignee with a lien for such demurrage.

2. Shipping ⟸184—Evidence held to show vessel's equipment would permit discharge at charter rate.

Evidence on a libel for demurrage *held* to show that the vessel's equipment was sufficient, if manned with competent labor, to have discharged the vessel at the rate required by charter, and that the delay was due to the inefficiency of the labor employed.

3. Shipping ⟸177—Vessel's capacity for discharging includes capacity of laborers it must furnish as well as of equipment.

Since the vessel is under obligations to furnish the labor for discharging the cargo, a provision in the charter party extending the lay days, if the vessel is unable to discharge at the rates provided, is not limited to cases where the vessel's equipment is insufficient to discharge at that rate, but includes cases where the laborers furnished by the vessel are not sufficiently efficient, because of general labor conditions at the port, to make the discharge at the required rate.

In Admiralty. Separate libels by the United States, as owner of the steamship Lake Fairlie and five other steamships, against the Sugarland Industries to recover demurrage. Decree rendered for respondent.

⟸For other cases see same topic & KEY-NUMBER in all Key-Numbered Digests & Indexes

U.S. Supreme Court

DOWNES v. BIDWELL, 182 U.S. 244 (1901)

182 U.S. 244

SAMUEL DOWNES, Doing Business under the Firm Name of S. B. Downes & Company, Plff. in Err.,
v.
GEORGE R. BIDWELL.
No. 507.

Argued January 8, 9, 10, 11, 1901.
Decided May 27, 1901.

[182 U.S. 244, 247] This was an action begun in the circuit court by Downes, doing business under the firm name of S. B. Downes & Co., against the collector of the port of New York, to recover back duties to the amount of $659.35 exacted and paid under protest upon certain oranges consigned to the plaintiff at New York, and brought thither from the port of San Juan in the island of Porto Rico during the month of November, 1900, after the passage of the act temporarily providing a civil government and revenues for ths island of Porto Rico, known as the Foraker act.

The district attorney demurred to the complaint for the want of jurisdiction in the court, and for insufficiency of its averments. The demurrer was sustained, and the complaint dismissed. Whereupon plaintiff sued out this writ of error.

Messrs. Frederic R. Coudert, Jr., and Paul Fuller for plaintiff in error.

Solicitor General Richards and Attorney General Griggs for defendant in error.

Statement by Mr. Justice Brown:

This case involves the question whether merchandise brought into the port of New York from Porto Rico since the passage of the Foraker act is exempt from duty, notwithstanding the 3d section of that act which requires the payment of '15 [182 U.S. 244, 248] per centum of the duties which are required to be levied, collected, and paid upon like articles of merchandise imported from foreign countries.'

1. The exception to the jurisdiction of the court is not well taken. By Rev. Stat. 629, subd. 4, the circuit courts are vested with jurisdiction 'of all suits at law or in equity arising under any act providing for revenue from imports or tonnage,' irrespective of the amount involved. This section should be construed in connection with 643, which provides for the removal from state courts to circuit courts of the United States of suits against revenue officers 'on account of any act done under color of his office, or of any such [revenue] law, or on account of any right, title, or authority claimed by such officer or other person under any such law.' Both these sections are taken from the act of March 2, 1833 (4 Stat. at L. 632, chap. 57) commonly known as the force bill, and are evidently intended to include all actions against customs officers acting under color of their office. While, as we have held in De Lima v. Bidwell, 181 U. S. --, ante, 743, 21 Sup. Ct. Rep. 743, Actions against the collector to recover back duties assessed upon nonimportable property are not 'customs cases' in the sense of the administrative act, they are, nevertheless, actions arising under an act to provide for a revenue from imports, in the sense of 629, since they are for acts done by a collector under color of his office. This subdivision of 629 was not repealed by the jurisdictional act of 1875, or the subsequent act of August 13, 1888, since these acts were 'not intended to interfere with the prior statutes conferring jurisdiction upon the circuit or district courts in special cases and over particular subjects. United States v. Mooney, 116 U.S. 104, 107 , 29 S. L. ed. 550, 552, 6 Sup. Ct. Rep. 304, 306. See also Merchants' Ins. Co. v. Ritchie, 5 Wall. 541, 18 L. ed. 540; Philadelphia v. The Collector, 5 Wall. 720, sub nom. Philadelphia v. Diehl, 18 L. ed. 614; Hornthall v. The Collector, 9 Wall. 560, sub nom. Hornthall v. Keary, 19 L. ed. 560 As the case 'involves the construction or application of the Constitution,' as well as the constitutionality of a law of the United States, the writ of error was properly sued out from this court.

2. In the case of De Lima v. Bidwell just decided, 181 U. S. --, ante, 743, 21 Sup. Ct. Rep. 743, we held that, upon the ratification of the treaty of peace with Spain, Porto Rico ceased to be a foreign country, and became a terri- [182 U.S. 244, 249] tory of the United States, and that duties were no longer collectible upon merchandise brought from that island. We are now asked to hold that it became a part of the United States within that provision of the Constitution which declares that 'all duties, imposts, and excises shall be uniform throughout the United States.' Art. 1, 8. If Porto Rico be a part of the United States, the Foraker act imposing duties upon its products is unconstitutional, not only by reason of a violation of the uniformity clause, but because by 9 'vessels bound to or from one state' cannot 'be obliged to enter, clear, or pay duties in another.'

The case also involves the broader question whether the revenue clauses of the Constitution extend of their own force to our newly acquired territories. The Constitution itself does not answer the question. Its solution must be found in the nature of the government created by that instrument, in the opinion of its contemporaries, in the practical construction put upon it by Congress, and in the decisions of this court.

The Federal government was created in 1777 by the union of thirteen colonies of Great Britain in 'certain articles of confederation and perpetual union,' the first one of which declared that 'the stile of this confederacy shall be the United States of America.' Each member of the confederacy was denominated a state. Provision was made for the representation of each state by not less than two nor more than seven delegates; but no mention was made of territories or other lands, except in article 11,

which authorized the admission of Canada, upon its 'acceding to this confederation,' and of other colonies if such admission were agreed to by nine states. At this time several states made claims to large tracts of land in the unsettled west, which they were at first indisposed to relinquish. Disputes over these lands became so acrid as nearly to defeat the confederacy, before it was fairly put in operation. Several of the states refused to ratify the articles, because the convention had taken no steps to settle the titles to these lands upon principles of equity and sound policy; but all of them, through fear of being accused of disloyalty, finally yielded their claims, though Maryland held out until 1781. Most of these states in the [182 U.S. 244, 250] meantime having ceded their interests in these lands, the confederate Congress, in 1787, created the first territorial government northwest of the Ohio river, provided for local self-government, a bill of rights, a representation in Congress by a delegate, who should have a seat 'with a right of debating, but not of voting,' and for the ultimate formation of states therefrom, and their admission into the Union on an equal footing with the original states.

The confederacy, owing to well-known historical reasons, having proven a failure, a new Constitution was formed in 1787 by 'the people of the United States' 'for the United States of America,' as its preamble declares. All legislative powers were vested in a Congress consisting of representatives from the several states, but no provision was made for the admission of delegates from the territories, and no mention was made of territories as separate portions of the Union, except that Congress was empowered 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' At this time all of the states had ceded their unappropriated lands except North Carolina and Georgia. It was thought by Chief Justice Taney in the Dred Scott Case, 19 How. 393, 436, 15 L. ed. 691, 713, that the sole object of the territorial clause was 'to transfer to the new government the property then held in common by the states, and to give to that government power to apply it to the objects for which it had been destined by mutual agreement among the states before their league was dissolved;' that the power 'to make needful rules and regulations' was not intended to give the powers of sovereignty, or to authorize the establishment of territorial governments,-in short, that these words were used in a proprietary, and not in a political, sense. But, as we observed in De Lima v. Bidwell, the power to establish territorial governments has been too long exercised by Congress and acquiesced in by this court to be deemed an unsettled question. Indeed, in the Dred Scott Case it was admitted to be the inevitable consequence of the right to acquire territory.

It is sufficient to observe in relation to these three fundamental instruments, that it can nowhere be inferred that the [182 U.S. 244, 251] territories were considered a part of the United States. The Constitution was created by the people of the United States, as a union of states, to be governed solely by representatives of the states; and even the provision relied upon here, that all duties, imposts, and excises shall be uniform 'throughout the United States,' is explained by subsequent provisions of the Constitution, that 'no tax or duty shall be laid on articles exported from any state,' and 'no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.' In short, the Constitution deals with states, their people, and their representatives.

The 13th Amendment to the Constitution, prohibiting slavery and involuntary servitude 'within the United States, or in any place subject to their jurisdiction,' is also significant as showing that there may be places within the jurisdiction of the United States that are no part of the Union. To say that the phraseology of this amendment was due to the fact that it was intended to prohibit slavery in the seceded states, under a possible interpretation that those states were no longer a part of the Union, is to confess the very point in issue, since it involves an admission that, if these states were not a part of the Union, they were still subject to the jurisdiction of the United States.

Upon the other hand, the 14th Amendment, upon the subject of citizenship, declares only that 'all

persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside.' Here there is a limitation to persons born or naturalized in the United States, which is not extended to persons born in any place 'subject to their jurisdiction.'

The question of the legal relations between the states and the newly acquired territories first became the subject of public discussion in connection with the purchase of Louisiana in 1803. This purchase arose primarily from the fixed policy of Spain to exclude all foreign commerce from the Mississippi. This restriction became intolerable to the large number of immigrants who were leaving the eastern states to settle in the fertile val- [182 U.S. 244, 252] ley of that river and its tributaries. After several futile attempts to secure the free navigation of that river by treaty, advantage was taken of the exhaustion of Spain in her war with France, and a provision inserted in the treaty of October 27, 1795, by which the Mississippi river was opened to the commerce of the United States. 8 Stat. at L. 138, 140, art. 4. In October, 1800, by the secret treaty of San Ildefonso, Spain retroceded to France the territory of Louisiana. This treaty created such a ferment in this country that James Monroe was sent as minister extraordinary with discretionary powers to co-operate with Livingston, then minister to France, in the purchase of New Orleans, for which Congress appropriated $2,000,000. To the surprise of the negotiators, Bonaparte invited them to make an offer for the whole of Louisiana at a price finally fixed at $15,000,000. It is well known that Mr. Jefferson entertained grave doubts as to his power to make the purchase, or, rather, as to his right to annex the territory and make it part of the United States, and had instructed Mr. Livingston to make no agreement to that effect in the treaty, as he believed it could not be legally done. Owing to a new war between England and France being upon the point of breaking out, there was need for haste in the negotiations, and Mr. Livingston took the responsibility of disobeying his instructions, and, probably owing to the insistence of Bonaparte, consented to the 3d article of the treaty, which provided that 'the inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.' [8 Stat. at L. 202.] This evidently committed the government to the ultimate, but not to the immediate, admission of Louisiana as a state, and postponed its incorporation into the Union to the pleasure of Congress. In regard to this, Mr. Jefferson, in a letter to Senator Breckinridge of Kentucky, of August 12, 1803, used the following language: 'This treaty must, of course, be laid before both Houses, because [182 U.S. 244, 253] both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to the nation for an additional article to the Constitution approving and confirming an act which the nation had not previously authorized. The Constitution has made no provision for holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrence which so much advances the good of our country, have done an act beyond the Constitution.'

To cover the questions raised by this purchase Mr. Jefferson prepared two amendments to the Constitution, the first of which declared that 'the province of Louisiana is incorporated with the United States and made part thereof;' and the second of which was couched in a little different language, viz.: 'Louisiana, as ceded by France to the United States, is made a part of the United States. Its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing as other citizens in analogous situations.' But by the time Congress assembled, October 17, 1803, either the argument of his friends or the pressing necessity of the situation seems to have dispelled his doubts regarding his power under the Constitution, since in his message to Congress he referred the whole matter to that body, saying that 'with the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and temporary government of the country; for its

incorporation into the Union.' Jefferson's Writings, vol. 8, p. 269.

The raising of money to provide for the purchase of this territory, and the act providing a civil government, gave rise to an animated debate in Congress, in which two questions were prominently presented: First, whether the provision for the ultimate incorporation of Louisiana into the Union was constitutional; and, second, whether the 7th article of the treaty admitting the ships of Spain and France for the next twelve years 'into the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of [182 U.S. 244, 254] the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise or other or greater tonnage than that paid by the citizens of the United States' [8 Stat. at L. 204], was an unlawful discrimination in favor of those ports and an infringement upon art. 1, 9, of the Constitution, that no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another.' This article of the treaty contained the further stipulation that 'during the space of time above mentioned to other nation shall have a right to the same privileges in the ports of the ceded territory; . . . and it is well understood that the object of the above article is to favor the manufactures, commerce, freight, and navigation of France and Spain.'

It is unnecessary to enter into the details of this debate. The arguments of individual legislators are no proper subject for judicial comment. They are so often influenced by personal or political considerations, or by the assumed necessities of the situation, that they can hardly be considered even as the deliberate views of the persons who make them, much less as dictating the construction to be put upon the Constitution by the courts. United States v. Union P. R. Co. 91 U.S. 72, 79 , 23 S. L. ed, 224, 228. Suffice it to say that the administration party took the ground that, under the constitutional power to make treaties, there was ample power to acquire territory, and to hold and govern it under laws to be passed by Congress; and that as Louisiana was incorporated into the Union as a territory, and not as a state, a stipulation for citizenship became necessary; that as a state they would not have needed a stipulation for the safety of their liberty, property, and religion, but as territory this stipulation would govern and restrain the undefined powers of Congress to 'make rules and regulations' for territories. The Federalists admitted the power of Congress to acquire and hold territory, but denied its power to incorporate it into the Union under the Constitution as it then stood.

They also attacked the 7th article of the treaty, discriminating in favor of French and Spanish ships, as a distinct violation of the Constitution against preference being given to the [182 U.S. 244, 255] ports of one state over those of another. The administration party, through Mr. Elliott of Vermont, replied to this that 'the states, as such, were equal and intended to preserve that equality; and the provision of the Constitution alluded to was calculated to prevent Congress from making any odious discrimination or distinctions between particular states. It was not contemplated that this provision would have application to colonial or territorial acquisitions.' Said Mr. Nicholson of Maryland, speaking for the administration: It [Louisiana] is in the nature of a colony whose commerce may be regulated without any reference to the Constitution. Had it been the island of Cuba which was ceded to us, under a similar condition of admitting French and Spanish vessels for a limited time into Havana, could it possibly have been contended that this would be giving a preference to the ports of one state over those of another, or that the uniformity of duties, imposts, and excises throughout the United States would have been destroyed? And because Louisiana lies adjacent to our own territory is it to be viewed in a different light?'

As a sequence to this debate two bills were passed, one October 31, 1803 (2 Stat. at L. 245, chap. 1), authorizing the President to take possession of the territory and to continue the existing government, and the other November 10, 1803 (2 Stat. at L. 245, chap. 2), making provision for the payment of the purchase price. These acts continued in force until March 26, 1804, when a new act was passed

providing for a temporary government (2 Stat. at L. 283, chap. 38), and vesting all legislative powers in a governor and legislative council, to be appointed by the President. These statutes may be taken as expressing the views of Congress, first, that territory may be lawfully acquired by treaty, with a provision for its ultimate incorporation into the Union; and, second, that a discrimination in favor of certain foreign vessels trading with the ports of a newly acquired territory is no violation of that clause of the Constitution (art. 1, 9) that declares that no preference shall be given to the ports of one state over those of another. It is evident that the constitutionality of this discrimination can only be supported upon the theory that ports of territories are not ports of state within the meaning of the Constitution. [182 U.S. 244, 256] The same construction was adhered to in the treaty with Spain for the purchase of Florida (8 Stat. at L. 252) the 6th article of which provided that the inhabitants should 'be incorporated into the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution;' and the 15th article of which agreed that Spanish vessels coming directly from Spanish ports and laden with productions of Spanish growth or manufacture should be admitted, for the term of twelve years, to the ports of Pensacola and St. Augustine 'without paying other or higher duties on their cargoes, or of tonnage, than will be paid by the vessels of the United States,' and that 'during the said term no other nation shall enjoy the same privileges within the ceded territories.'

So, too, in the act annexing the Republic of Hawaii, there was a provision continuing in effect the customs relations of the Hawaiian islands with the United States and other countries, the effect of which was to compel the collection in those islands of a duty upon certain articles, whether coming from the United States or other countries, much greater than the duty provided by the general tariff law then in force. This was a discrimination against the Hawaiian ports wholly inconsistent with the revenue clauses of the Constitution, if such clauses were there operative.

The very treaty with Spain under discussion in this case contains similar discriminative provisions, which are apparently irreconcilable with the Constitution, if that instrument be held to extend to these islands immediately upon their cession to the United States. By article 4 the United States agree, for the term of ten years from the date of the exchange of the ratifications of the present treaty, to admit Spanish ships and merchandise to the ports of the Philippine islands on the same terms as ships and merchandise of the United States,'-a privilege not extending to any other ports. It was a clear breach of the uniformity clause in question, and a manifest excess of authority on the part of the commissioners, if ports of the Philippine islands be ports of the United States.

So, too, by article 13, 'Spanish scientific, literary, and artistic works . . . shall be continued to be admitted free of [182 U.S. 244, 257] duty in such territories for the period of ten years, to be reckoned from the date of the exchange of the ratifications of this treaty.' This is also a clear discrimination in favor of Spanish literary productions into particular ports.

Notwithstanding these provisions for the incorporation of territories into the Union, Congress, not only in organizing the territory of Louisiana by act of March 26, 1804, but all other territories carved out of this vast inheritance, has assumed that the Constitution did not extend to them of its own force, and has in each case made special provision, either that their legislatures shall pass no law inconsistent with the Constitution of the United States, or that the Constitution or laws of the United States shall be the supreme law of such territories. Finally, in Rev. Stat. 1891, a general provision was enacted that 'the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized territories, and in every territory hereafter organized, as elsewhere within the United States.'

So, too, on March 6, 1820 (3 Stat. at L. 545, chap. 22), in an act authorizing the people of Missouri to form a state government, after a heated debate, Congress declared that in the territory of Louisiana

north of 36ø 30' slavery should be forever prohibited. It is true that, for reasons which have become historical, this act was declared to be unconstitutional in Scott v. Sandford, 19 How. 393, 15 L. ed. 691, but it is none the less a distinct annunciation by Congress of power over property in the territories, which it obviously did not possess in the several states.

The researches of counsel have collated a large number of other instances in which Congress has in its enactments recognized the fact that provisions intended for the states did not embrace the territories, unless specially mentioned. These are found in the laws prohibiting the slave trade with 'the United States or territories thereof;' or equipping ships 'in any port or place within the jurisdiction of the United States;' in the internal revenue laws, in the early ones of which no provision was made for the collection of taxes in the territory not included within the boundaries of the existing states, and others of which extended them expressly to the territories, or 'within [182 U.S. 244, 258] the exterior boundaries of the United States;' and in the acts extending the internal revenue laws to the territories of Alaska and Oklahoma. It would prolong this opinion unnecessarily to set forth the provisions of these acts in detail. It is sufficient to say that Congress has or has not applied the revenue laws to the territories, as the circumstances of each case seemed to require, and has specifically legislated for the territories whenever it was its intention to execute laws beyond the limits of the states. Indeed, whatever may have been the fluctuations of opinion in other bodies (and even this court has not been exempt from them), Congress has been consistent in recognizing the difference between the states and territories under the Constitution.

The decisions of this court upon this subject have not been altogether harmonious. Some of them are based upon the theory that the Constitution does not apply to the territories without legislation. Other cases, arising from territories where such legislation has been had, contain language which would justify the inference that such legislation was unnecessary, and that the Constitution took effect immediately upon the cession of the territory to the United States. It may be remarked, upon the threshold of an analysis of these cases, that too much weight must not be given to general expressions found in several opinions that the power of Congress over territories is complete and supreme, because these words may be interpreted as meaning only supreme under the Constitution; her, upon the other hand, to general statements that the Constitution covers the territories as well as the states, since in such cases it will be found that acts of Congress had already extended the Constitution to such territories, and that thereby it subordinated, not only its own acts, but those of the territorial legislatures, to what had become the supreme law of the land. 'It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually [182 U.S. 244, 259] before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.' Cohen v. Virginia, 6 Wheat. 264, 399, 5 L. ed. 257, 290.

The earliest case is that of Hepburn v. Ellzey, 2 Cranch, 445, 2 L. ed. 332, in which this court held that, under that clause of the Constitution limiting the jurisdiction of the courts of the United States to controversies between citizens of different states, a citizen of the District of Columbia could not maintain an action in the circuit court of the United States. It was argued that the word 'state.' in that connection, was used simply to denote a distinct political society. 'But,' said the Chief Justice, 'as the act of Congress obviously used the word 'state' in reference to that term as used in the Constitution, it becomes necessary to inquire whether Columbia is a state in the sense of that instrument. The result of that examination is a conviction that the members of the American confederacy only are the states contemplated in the Constitution , . . . and excludes from the term the signification attached to it by writers on the law of nations.' This case was followed in Barney v. Baltimore, 6 Wall. 280, 18 L. ed.

825, and quite recently in Hooe v. Jamieson, 166 U.S. 395 , 41 L. ed. 1049, 17 Sup. Ct. Rep. 596. The same rule was applied to citizens of territories in New Orleans v. Winter, 1 Wheat. 91, 4 L. ed. 44, in which an attempt was made to distinguish a territory from the District of Columbia. But it was said that 'neither of them is a state in the sense in which that term is used in the Constitution.' In Scott v. Jones, 5 How. 343, 12 L. ed. 181, and in Miners' Bank v. Iowa ex rel. District Prosecuting Attorney, 12 How. 1, 13 L. ed. 867, it was held that under the judiciary act, permitting writs of error to the supreme court of a state in cases where the validity of a state statute is drawn in question, an act of a territorial legislature was not within the contemplation of Congress.

Loughborough v. Blake, 5 Wheat. 317, 5 L. ed. 98, was an action of trespass or, as appears by the original record, replevin, brought in the circuit court for the District of Columbia to try the right of Congress to impose a direct tax for general purposes on that District. 3 Stat. at L. 216, chap. 60. It was insisted that Congress could act in a double capacity: in one as legislating [182 U.S. 244, 260] for the states; in the other as a local legislature for the District of Columbia. In the latter character, it was admitted that the power of levying direct taxes might be exercised, but for District purposes only, as a state legislature might tax for state purposes; but that it could not legislate for the District under art. 1, 8, giving to Congress the power 'to lay and collect taxes, imposts, and excises,' which 'shall be uniform throughout the United States,' inasmuch as the District was no part of the United States. It was held that the grant of this power was a general one without limitation as to place, and consequently extended to all places over which the government extends; and that it extended to the District of Columbia as a constituent part of the United States. The fact that art. 1 , 2, declares that 'representatives and direct taxes shall be apportioned among the several states . . . according to their respective numbers' furnished a standard by which taxes were apportioned, but not to exempt any part of the country from their operation. 'The words used do not mean that direct taxes shall be imposed on states only which are represented, or shall be apportioned to representatives; but that direct taxation, in its application to states, shall be apportioned to numbers.' That art. 1, 9, 4, declaring that direct taxes shall be laid in proportion to the census, was applicable to the District of Columbia, 'and will enable Congress to apportion on it its just and equal share of the burden, with the same accuracy as on the respective states. If the tax be laid in this proportion, it is within the very words of the restriction. It is a tax in proportion to the census or enumeration referred to.' It was further held that the words of the 9th section did not 'in terms require that the system of direct taxation, when resorted to, shall be extended to the territories, as the words of the 2d section require that it shall be extended to all the states. They therefore may, without violence, be understood to give a rule when the territories shall be taxed, without imposing the necessity of taxing them.'

There could be no doubt as to the correctness of this conclusion, so far, at least, as it applied to the District of Columbia. This District had been a part of the states of Maryland and [182 U.S. 244, 261] Virginia. It had been subject to the Constitution, and was a part of the United States. The Constitution had attached to it irrevocably. There are steps which can never be taken backward. The tie that bound the states of Maryland and Virginia to the Constitution could not be dissolved, without at least the consent of the Federal and state governments to a formal separation. The mere cession of the District of Columbia to the Federal government relinquished the authority of the states, but it did not take it out of the United States or from under the aegis of the Constitution. Neither party had ever consented to that construction of the cession. If, before the District was set off, Congress had passed an unconstitutional act affecting its inhabitants, it would have been void. If done after the District was created, it would have been equally void; in other words, Congress could not do indirectly, by carving out the District, what it could not do directly. The District still remained a part of the United States, protected by the Constitution. Indeed, it would have been a fanciful construction to hold that territory which had been once a part of the United States ceased to be such by being ceded directly to the Federal government.

In delivering the opinion, however, the Chief Justice made certain observations which have occasioned

some embarrassment in other cases. 'The power,' said he, 'to lay and collect duties, imposts, and excises may be exercised, and must be exercised, throughout the United States. Does this term designate the whole, or any particular portion of the American empire? Certainly this question can admit but of one answer. It is the name given to our great Republic which is composed of states and territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other. Since, then, the power to lay and collect taxes, which includes direct taxes, is obviously coextensive with the power to lay and collect duties, imposts, and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends through- [182 U.S. 244, 262] out the United States.' So far as applicable to the District of Columbia, these observations are entirely sound. So far as they apply to the territories, they were not called for by the exigencies of the case.

In line with Loughborough v. Blake is the case of Callan v. Wilson, 127 U.S. 540 , 32 L. ed. 223, 8 Sup. Ct. Rep. 1301, in which the provisions of the Constitution relating to trial by jury were held to be in force in the District of Columbia. Upon the other hand, in De Geofroy v. Riggs 133 U.S. 258 , 33 L. ed. 642, 10 Sup. Ct. Rep. 295, the District of Columbia, as a political community, was held to be one of 'the states of the Union' within the meaning of that term as used in a consular convention of February 23, 1853, with France. The 7th article of that convention provided that in all the states of the Union whose existing laws permitted it Frenchmen should enjoy the right of holding, disposing of, and inheriting property in the same manner as citizens of the United States; and as to the states of the Union by whose existing laws aliens were not permitted to hold real estate the President engaged to recommend to them the passage of such laws as might be necessary for the purpose of conferring this right. The court was of opinion that if these terms, 'states of the Union,' were held to exclude the District of Columbia and the territories, our government would be placed in the inconsistent position of stipulating that French citizens should enjoy the right of holding, disposing of, and inheriting property in like manner as citizens of the United States, in states whose laws permitted it, and engaging that the President should recommend the passage of laws conferring that right in states whose laws did not permit aliens to hold real estate, while at the same time refusing to citizens of France holding property in the District of Columbia and in some of the territories, where the power of the United States is in that respect unlimited, a like release from the disabilities of alienage, 'thus discriminating against them in favor of citizens of France holding property in states having similar legislation. No plausible motive can be assigned for such discrimination. A right which the government of the United States apparently desires that citizens of France should enjoy in all the states it would hardly refuse to them in the district [182 U.S. 244, 263] embracing its capital, or in any of its own territorial dependencies.'

This case may be considered as establishing the principle that, in dealing with foreign sovereignties, the term 'United States' has a broader meaning than when used in the Constitution, and includes all territories subject to the jurisdiction of the Federal government, wherever located. In its treaties and conventions with foreign nations this government is a unit. This is so, not because the territories comprised a part of the government established by the people of the states in their Constitution, but because the Federal government is the only authorized organ of the territories, as well as of the states, in their foreign relations. By art. 1, 10, of the Constitution, 'no state shall enter into any treaty, alliance, or confederation, . . . [or] enter into any agreement or compact with another state, or with a foreign power.' It would be absurd to hold that the territories, which are much less independent than the states, and are under the direct control and tutelage of the general government, possess a power in this particular which is thus expressly forbidden to the states.

It may be added in this connection, that to put at rest all doubts regarding the applicability of the Constitution to the District of Columbia, Congress by the act of February 21, 1871 (16 Stat. at L. 419,

426, chap. 62, 34), specifically extended the Constitution and laws of the United States to this District.

The case of American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242, originated in a libel filed in the district court for South Carolina, for the possession of 356 bales of cotton which had been wrecked on the coast of Florida, abandoned to the insurance companies, and subsequently brought to Charleston. Canter claimed the cotton as bona fide purchaser at a marshal's sale at Key West, by virtue of a decree of a territorial court consisting of a notary and five jurors, proceeding under an act of the governor and legislative council of Florida. The case turned upon the question whether the sale by that court was effectual to devest the interest of the underwriters. The district judge pronounced the proceedings a nullity, and rendered a decree from which both parties appealed to the circuit court. The circuit court [182 U.S. 244, 264] reversed the decree of the district court upon the ground that the proceedings of the court at Key West were legal, and transferred the property to Canter, the alleged purchaser.

The opinion of the circuit court was delivered by Mr. Justice Johnson, of the Supreme Court, and is published in full in a note in Peters's Reports. It was argued that the Constitution vested the admiralty jurisdiction exclusively in the general government; that the legislature of Florida had exercised an illegal power in organizing this court, and that its decrees were void. On the other hand, it was insisted that this was a court of separate and distinct jurisdiction from the courts of the United States, and as such its acts were not to be reviewed in a foreign tribunal, such as was the court of South Carolina; 'that the district of Florida was no part of the United States, but only an acquisition or dependency, and as such the Constitution per se had no binding effect in or over it.' 'It becomes,' said the court 'indispensable to the solution of these difficulties that we should conceive a just idea of the relation in which Florida stands to the United States. . . . And, first, it is obvious that there is a material distinction between the territory now under consideration and that which is acquired from the aborigines (whether by purchase or conquest) within the acknowledged limits of the United States, as also that which is acquired by the establishment of a disputed line. As to both these there can be no question that the sovereignty of the state or territory within which it lies, and of the United States, immediately attached, producing a complete subjection to all the laws and institutions of the two governments, local and general, unless modified by treaty. The question now to be considered relates to territories previously subject to the acknowledged jurisdiction of another sovereign, such as was Florida to the Crown of Spain. And on this subject we have the most explicit proof that the understanding of our public functionaries is that the government and laws of the United States do not extend to such territory by the mere act of cession. For in the act of Congress of March 30, 1822, 9, we have an enumeration of the acts of Congress which are to be held in force in the territory; and in the 10th section an enumeration, in the nature of a bill [182 U.S. 244, 265] of rights, of privileges and immunities which could not be denied to the inhabitants of the territory if they came under the Constitution by the mere act of cession. . . . These states, this territory, and future states to be admitted into the Union are the sole objects of the Constitution; there is no express provision whatever made in the Constitution for the acquisition or government of territories beyond those limits.' He further held that the right of acquiring territory was altogether incidental to the treaty-making power; that their government was left to Congress; that the territory of Florida did 'not stand in the relation of a state to the United States;' that the acts establishing a territorial government were the Constitution of Florida; that while, under these acts, the territorial legislature could enact nothing inconsistent with what Congress had made inherent and permanent in the territorial government, it had not done so in organizing the court at Key West.

From the decree of the circuit court the underwriters appealed to this court, and the question was argued whether the circuit court was correct in drawing a distinction between territories existing at the date of the Constitution and territories subsequently acquired. The main contention of the appellants was that the superior courts of Florida had been vested by Congress with exclusive jurisdiction in all admiralty and maritime cases; that salvage was such a case, and therefore any law of Florida giving jurisdiction in

salvage cases to any other court was unconstitutional. On behalf of the purchaser it was argued that the Constitution and laws of the United States were not per se in force in Florida, nor the inhabitants citizens of the United States; that the Constitution was established by the people of the United States for the United States; that if the Constitution were in force in Florida it was unnecessary to pass an act extending the laws of the United States to Florida. 'What is Florida?' said Mr. Webster. 'It is no part of the United States. How can it be? How is it represented? Do the laws of the United States reach Florida? Not unless by particular provisions.'

The opinion of Mr. Chief Justice Marshall in this case should be read in connection with art. 3, 1 and 2, of the Con- [182 U.S. 244, 266] stitution, vesting 'the judicial power of the United States' in 'one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges both of the Supreme and inferior courts shall hold their offices during good behavior,' etc. He held that the court 'should take into view the relation in which Florida stands to the United States;' that territory ceded by treaty 'becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose.' That Florida, upon the conclusion of the treaty, became a territory of the United States and subject to the power of Congress under the territorial clause of the Constitution. The acts providing a territorial government for Florida were examined in detail. He held that the judicial clause of the Constitution, above quoted, did not apply to Florida; that the judges of the superior courts of Florida held their office for four years; that 'these courts are not, then, constitutional courts in which the judicial power conferred by the Constitution on the general government can be deposited;' that 'they are legislative courts, created in virtue of the general right of sovereignty which exists in the government,' or in virtue of the territorial clause of the Constitution; that the jurisdiction with which they are invested is not a part of judicial power of the Constitution, but is conferred by Congress in the exercise of those general powers which that body possesses over the territories of the United States; and that in legislating for them Congress exercises the combined powers of the general and of a state government. The act of the territorial legislature creating the court in question was held not to be 'inconsistent with the laws and Constitution of the United States,' and the decree of the circuit court was affirmed.

As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution and upon territory which is not part of the United States within the meaning of the Constitution. In delivering his opinion in this [182 U.S. 244, 267] case Mr. Chief Justice Marshall made no reference whatever to the prior case of Loughborough v. Blake, 5 Wheat. 317, 5 L. ed. 98, in which he had intimated that the territories were part of the United States. But if they be a part of the United States, it is difficult to see how Congress could create courts in such territories, except under the judicial clause of the Constitution. The power to make needful rules and regulations would certainly not authorize anything inconsistent with the Constitution if it applied to the territories. Certainly no such court could be created within a state, except under the restrictions of the judicial clause. It is sufficient to say that this case has ever since been accepted as authority for the proposition that the judicial clause of the Constitution has no application to courts created in the territories, and that with respect to them Congress has a power wholly unrestricted by it. We must assume as a logical inference from this case that the other powers vested in Congress by the Constitution have no application to these territories, or that the judicial clause is exceptional in that particular.

This case was followed in Benner v. Porter, 9 How. 235, 13 L. ed. 119, in which it was held that the jurisdiction of these territorial courts ceased upon the admission of Florida into the Union, Mr. Justice Nelson remarking of them (p. 242, L. ed. p. 122), that 'they are not organized under the Constitution, nor subject to its complex distribution of the powers of government, as the organic law; but are the creations, exclusively, of the legislative department, and subject to its supervision and control. Whether

or not there are provisions in that instrument which extend to and act upon these territorial governments, it is not now material to examine. We are speaking here of those provisions that refer particularly to the distinction between Federal and state jurisdiction . . . . (p. 244, L. ed. p. 123). Neither were they organized by Congress under the Constitution, as they were invested with powers and jurisdiction which that body were incapable of conferring upon a court within the limits of a state.' To the same effect are Clinton v. Englebrecht, 13 Wall. 434, 20 L. ed. 659; Good v. Martin, 95 U.S. 90, 98 , 24 S. L. ed. 341, 344; and McAllister v. United States, 141 U.S. 174 , 35 L. ed. 693, 11 Sup. Ct. Rep. 949.

That the power over the territories is vested in Congress [182 U.S. 244, 268] without limitation, and that this power has been considered the foundation upon which the territorial governments rest, was also asserted by Chief Justice Marshall in M'Culloch v. Maryland, 4 Wheat. 316, 422, 4 L. ed. 579, 605, and in United States v. Gratiot, 14 Pet. 526, 10 L. ed. 573. So, too, in Church of Jesus Christ of L. D. S. v. United States, 136 U.S. 1 , 34 L. ed. 478, 10 Sup. Ct. Rep. 792, in holding that Congress had power to repeal the charter of the church, Mr. Justice Bradley used the following forceful language: 'The power of Congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory, and no power to govern it when acquired. The power to acquire territory, other than the territory northwest of the Ohio river (which belonged to the United States at the adoption of the Constitution), is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty. The territory of Louisiana, when acquired from France, and the territories west of the Rocky mountains, when acquired from Mexico, became the absolute property and domain of the United States, subject to such conditions as the government, in its diplomatic negotiations, had seen fit to accept relating to the rights of the people then inhabiting those territories. Having rightfully acquired said territories, the United States government was the only one which could impose laws upon them, and its sovereignty over them was complete. . . . Doubtless Congress, in legislating for the territories, would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments, but those limitations would exist rather by inference and the general spirit of the Constitution, from which Congress derives all its powers, than by any express and direct application of its provisions.' See also, to the same [182 U.S. 244, 269] effect First Nat. Bank v. Yankton County, 101 U.S. 129 , 25 L. ed. 1046; Murphy v. Ramsey, 114 U.S. 15 , 29 L. ed. 47, 5 Sup. Ct. Rep. 747.

In Webster v. Reid, 11 How. 437, 13 L. ed. 761, it was held that a law of the territory of Iowa, which prohibited the trial by jury of certain actions at law founded on contract to recover payment for services, was void; but the case is of little value as bearing upon the question of the extension of the Constitution to that territory, inasmuch as the organic law of the territory of Iowa, by express provision and by reference, extended the laws of the United States, including the ordinance of 1787 (which provided expressly for jury trials), so far as they were applicable; and the case was put upon this ground. 5 Stat. at L. 235, 239, chap. 96, 12.

In Reynolds v. United States, 98 U.S. 145 , 25 L. ed. 244, a law of the territory of Utah, providing for grand juries of fifteen persons, was held to be constitutional, though Rev. Stat. 808, required that a grand jury impaneled before any circuit or district court of the United States shall consist of not less than sixteen nor more than twenty-three persons. Section 808 was held to apply only to the circuit and district courts. The territorial courts were free to act in obedience to their own laws.

In Ross's Case, 140 U.S. 453 , sub nom. Ross v. McIntyre, 35 L. ed. 581, 11 Sup. Ct. Rep. 897, petitioner had been convicted by the American consular tribunal in Japan, of a murder committed upon an American vessel in the harbor of Yokohama, and sentenced to death. There was no indictment by a grand jury, and no trial by a petit jury. This court affirmed the conviction, holding that the Constitution had no application, since it was ordained and established 'for the United States of America,' and not for countries outside of their limits. 'The guaranties it affords against accusation of capital or infamous crimes, except by indictment or presentment by a grand jury, and for an impartial trial by a jury when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad.'

In Springville v. Thomas, 166 U.S. 707 , 41 L. ed. 1172, 17 Sup. Ct. Rep. 717, it was held that a verdict returned by less than the whole number of jurors was invalid because in contravention of the 7th Amendment to the Constitution and the act of Congress of April 7, 1874 [182 U.S. 244, 270] (18 Stat. at L. 27, chap. 80), which provide 'that no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law.' It was also intimated that Congress 'could not impart the power to change the constitutional rule,' which was obviously true with respect to Utah, since the organic act of that territory (9 Stat. at L. 458, chap. 51, 17) had expressly extended to it the Constitution and laws of the United States. As we have already held, that provision, once made, could not be withdrawn. If the Constitution could be withdrawn directly, it could be nullified indirectly by acts passed inconsistent with it. The Constitution would thus cease to exist as such, and become of no greater authority than an ordinary act of Congress. In American Pub. Co. v. Fisher, 166 U.S. 464 , 41 L. ed. 1079, 17 Sup. Ct. Rep. 618, a similar law providing for majority verdicts was put upon the express ground above stated, that the organic act of Utah extended the Constitution over that territory. These rulings were repeated in Thompson v. Utah, 170 U.S. 343 , 42 L. ed. 1061, 18 Sup. Ct. Rep. 620, and applied to felonies committed before the territory became a state, although the state Constitution continued the same provision.

Eliminating, then, from the opinions of this court all expressions unnecessary to the disposition of the particular case, and gleaning therefrom the exact point decided in each, the following propositions may be considered as established:

1. That the District of Columbia and the territories are not states within the judicial clause of the Constitution giving jurisdiction in cases between citizens of different states;

2. That territories are not states within the meaning of Rev. Stat. 709, permitting writs of error from this court in cases where the validity of a state statute is drawn in question;

3. That the District of Columbia and the territories are states as that word is used in treaties with foreign powers, with respect to the ownership, disposition, and inheritance of property;

4. That the territories are not within the clause of the Constitution providing for the creation of a supreme court and such inferior courts as Congress may see fit to establish;

5. That the Constitution does not apply to foreign countries or to trials therein conducted, and that Congress may lawfully [182 U.S. 244, 271] provide for such trials before consular tribunals, without the intervention of a grand or petit jury;

6. That where the Constitution has been once formally extended by Congress to territories, neither Congress nor the territorial legislature can enact laws inconsistent therewith.

The case of Dred Scott v. Sandford, 19 How. 393, 15 L. ed. 691, remains to be considered. This was an action of trespass vi et armis brought in the circuit court for the district of Missouri by Scott, alleging himself to be a citizen of Missouri, against Sandford, a citizen of New York. Defendant pleaded to the jurisdiction that Scott was not a citizen of the state of Missouri, because a negro of African descent, whose ancestors were imported as negro slaves. Plaintiff demurred to this plea and the demurrer was sustained; whereupon, by stipulation of counsel and with leave of the court, defendant pleaded in bar the general issue, and specially that the plaintiff was a slave and the lawful property of defendant, and, as such, he had a right to restrain him. The wife and children of the plaintiff were also involved in the suit.

The facts in brief were that plaintiff had been a slave belonging to Dr. Emerson, a surgeon in the army; that in 1834 Emerson took the plaintiff from the state of Missouri to Rock Island, Illinois, and subsequently to Fort Snelling, Minnesota (then known as Upper Louisiana), and held him there until 1838. Scott married his wife there, of whom the children were subsequently born. In 1838 they returned to Missouri.

Two questions were presented by the record: First, whether the circuit court had jurisdiction; and, second, if it had jurisdiction, was the judgment erroneous or not? With regard to the first question, the court stated that it was its duty 'to decide whether the facts stated in the plea are or are not sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States,' and that the question was whether 'a negro whose ancestors were imported into this country and sold as slaves became a member of the political community formed and brought into existence by the Constitution of the United States, and as such became entitled to all the rights and privileges and immunities guaranteed by that instrument to the citizen, one of which rights is the privilege of suing in a court [182 U.S. 244, 272] of the United States.' It was held that he was not, and was not included under the word 'citizens' in the Constitution, and therefore could claim 'none of the rights and privileges which that instrument provides for and secures to citizens of the United States;' that it did not follow, because he had all the rights and privileges of a citizen of a state, he must be a citizen of the United States; that no state could by any law of its own 'introduce a new member into the political community created by the Constitution;' that the African race was not intended to be included, and formed no part of the people who framed and adopted the Declaration of Independence. The question of the status of negroes in England and the several states was considered at great length by the Chief Justice, and the conclusion reached that Scott was not a citizen of Missouri, and that the circuit court had no jurisdiction of the case.

This was sufficient to dispose of the case without reference to the question of slavery; but, as the plaintiff insisted upon his title to freedom and citizenship by the fact that he and his wife, though born slaves, were taken by their owner and kept four years in Illinois and Minnesota, they thereby became and upon their return to Missouri became citizens of that state, the Chief Justice proceeded to discuss the question whether Scott was still a slave. As the court had decided against his citizenship upon the plea in abatement, it was insisted that further decision upon the question of his freedom or slavery was extrajudicial and mere obiter dicta. But the Chief Justice held that the correction of one error in the court below did not deprive the appellate court of the power of examining further into the record and correcting any other material error which may have been committed; that the error of an inferior court in actually pronouncing judgment for one of the parties, in a case in which it had no jurisdiction, can be looked into or corrected by this court, even though it had decided a similar question presented in the pleadings.

Proceeding to decide the case upon the merits, he held that the territorial clause of the Constitution was confined to the territory which belonged to the United States at the time the Con- [182 U.S. 244, 273]

stitution was adopted, and did not apply to territory subsequently acquired from a foreign government.

In further examining the question as to what provision of the Constitution authorizes the Federal government to acquire territory outside of the original limits of the United States, and what powers it may exercise therein over the person or property of a citizen of the United States, he made use of the following expressions, upon which great reliance is placed by the plaintiff in this case (p. 446, L. ed. p. 718): 'There is certainly no power given by the Constitution to the Federal government to establish or maintain colonies bordering on the United States or at a distance, to be ruled and governed at its own pleasure ; . . . and if a new state is admitted, it needs no further legislation by Congress, because the Constitution itself defines the relative rights and powers and duties of the state, and the citizens of the state, and the Federal government. But no power is given to acquire a territory to be held and governed permanently in that character.'

He further held that citizens who migrate to a territory cannot be ruled as mere colonists, and that, while Congress had the power of legislating over territories until states were formed from them, it could not deprive a citizen of his property merely because he brought it into a particular territory of the United States, and that this doctrine applied to slaves as well as to other property. Hence, it followed that the act of Congress which prohibited a citizen from holding and owning slaves in territories north of 36ø 30' (known as the Missouri Compromise) was unconstitutional and void, and the fact that Scott was carried into such territory, referring to what is now known as Minnesota, did not entitle him to his freedom.

He further held that whether he was made free by being taken into the free state of Illinois and being kept there two years depended upon the laws of Missouri, and not those of Illinois, and that by the decisions of the highest court of that state his status as a slave continued, notwithstanding his residence of two years in Illinois.

It must be admitted that this case is a strong authority in favor of the plaintiff, and if the opinion of the Chief Justice be [182 U.S. 244, 274] taken at its full value it is decisive in his favor. We are not, however, bound to overlook the fact, that, before the Chief Justice gave utterance to his opinion upon the merits, he had already disposed of the case adversely to the plaintiff upon the question of jurisdiction, and that, in view of the excited political condition of the country at the time, it is unfortunate that he felt compelled to discuss the question upon the merits, particularly so in view of the fact that it involved a ruling that an act of Congress which had been acquiesced in for thirty years was declared unconstitutional. It would appear from the opinion of Mr. Justice Wayne that the real reason for discussing these constitutional questions was that 'there had become such a difference of opinion' about them 'that the peace and harmony of the country required the settlement of them by judicial decision.' p. 455, L. ed. p. 721. The attempt was not successful. It is sufficient to say that the country did not acquiesce in the opinion, and that the Civil War, which shortly thereafter followed, produced such changes in judicial, as well as public, sentiment as to seriously impair the authority of this case.

While there is much in the opinion of the Chief Justice which tends to prove that he thought all the provisions of the Constitution extended of their own force to the territories west of the Mississippi, the question actually decided is readily distinguishable from the one involved in the cause under consideration. The power to prohibit slavery in the territories is so different from the power to impose duties upon territorial products, and depends upon such different provisions of the Constitution, that they can scarcely be considered as analogous, unless we assume broadly that every clause of the Constitution attaches to the territories as well as to the states,-a claim quite inconsistent with the position of the court in the Canter Case. If the assumption be true that slaves are indistinguishable from other property, the inference from the Dred Scott Case is irresistible that Congress had no power to

prohibit their introduction into a territory. It would scarcely be insisted that Congress could with one hand invite settlers to locate in the territories of the United States, and with the other deny them the right to take their property and belongings with them. The two [182 U.S. 244, 275] are so inseparable from each other that one could scarcely be granted and the other withheld without an exercise of arbitrary power inconsistent with the underlying principles of a free government. It might indeed be claimed with great plausibility that such a law would amount to a deprivation of property within the 14th Amendment. The difficulty with the Dred Scott Case was that the court refused to make a distinction between property in general and a wholly exceptional class of property. Mr. Benton tersely stated the distinction by saying that the Virginian might carry his slaves into the territories, but he could not carry with him the Virginian law which made him a slave.

In his history of the Dred Scott Case, Mr. Benton states that the doctrine that the Constitution extended to territories as well as to states first made its appearance in the Senate in the session of 1848-1849, by an attempt to amend a bill giving territorial government to California, New Mexico, and Utah (itself 'hitched on' to a general appropriation bill), by adding the words 'that the Constitution of the United States and all and singular the several acts of Congress (describing them) be and the same hereby are extended and given full force and efficacy in said territories.' Says Mr. Benton: 'The novelty and strangeness of this proposition called up Mr. Webster, who repulsed as an absurdity and as an impossibility the scheme of extending the Constitution to the territories, declaring that instrument to have been made for states, not territories; that Congress governed the territories independently of the Constitution and incompatibly with it; that no part of it went to a territory but what Congress chose to send; that it could not act of itself anywhere, not even in the states for which it was made, and that it required an act of Congress to put it in operation before it had effect anywhere Mr. Clay was of the same opinion and added: 'Now, really, I must say the idea that eo instanti upon the consummation of the treaty, the Constitution of the United States spread itself over the acquired territory and carried along with it the institution of slavery is so irreconcilable with my comprehension, or any reason I possess, that I hardly know how to meet it.' Upon the other hand, Mr. Cal- [182 U.S. 244, 276] houn boldly avowed his intent to carry slavery into them under the wing of the Constitution, and denounced as enemies of the south all who opposed it.'

The amendment was rejected by the House, and a contest brought on which threatened the loss of the general appropriation bill in which this amendment was incorporated, and the Senate finally receded from its amendment. 'Such,' said Mr. Benton, 'were the portentous circumstances under which this new doctrine first revealed itself in the American Senate, and then as needing legislative sanction requiring an act of Congress to carry the Constitution into the territories and to give it force and efficacy there.' Of the Dred Scott Case he says: 'I conclude this introductory note with recurring to the great fundamental error of the court (father of all the political errors), that of assuming the extension of the Constitution to the territories. I call it assuming, for it seems to be a naked assumption without a reason to support it, or a leg to stand upon, condemned by the Constitution itself and the whole history of its formation and administration. Who were the parties to it? The states alone. Their delegates framed it in the Federal convention; their citizens adopted it in the state conventions. The Northwest Territory was then in existence and it had been for three years; yet it had no voice either in the framing or adopting of the instrument, no delegate at Philadelphia, no submission of it to their will for adoption. The preamble shows it made by states. Territories are not alluded to in it.'

Finally, in summing up the results of the decisions holding the invalidity of the Missouri Compromise and the self-extension of the Constitution to the territories, he declares 'that the decisions conflict with the uniform action of all the departments of the Federal government from its foundation to the present time, and cannot be received as rules governing Congress and the people without reversing that action, and admitting the political supremacy of the court, and accepting an altered Constitution from its hands and taking a new and portentous point of departure in the working of the government.'

To sustain the judgment in the case under consideration, it by no means becomes necessary to show that none of the articles [182 U.S. 244, 277] of the Constitution apply to the island of Porto Rico. There is a clear distinction between such prohibitions as go to the very root of the power of Congress to act at all, irrespective of time of place, and such as are operative only 'throughout the United States' or among the several states.

Thus, when the Constitution declares that 'no bill of attainder or ex post facto law shall be passed,' and that 'no title of nobility shall be granted by the United States,' it goes to the competency of Congress to pass a bill of that description. Perhaps the same remark may apply to the 1st Amendment, that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacefully assemble and to petition the government for a redress of grievances.' We do not wish, however, to be understood as expressing an opinion how far the bill of rights contained in the first eight amendments is of general and how far of local application.

Upon the other hand, when the Constitution declares that all duties shall be uniform 'throughout the United States,' it becomes necessary to inquire whether there be any territory over which Congress has jurisdiction which is not a part of the 'United States,' by which term we understand the states whose people united to form the Constitution, and such as have since been admitted to the Union upon an equality with them. Not only did the people in adopting the 13th Amendment thus recognize a distinction between the United States and 'any place subject to their jurisdiction,' but Congress itself, in the act of March 27, 1804 (2 Stat. at L. 298, chap. 56), providing for the proof of public records, applied the provisions of the act, not only to 'every court and office within the United States,' but to the 'courts and offices of the respective territories of the United States and countries subject to the jurisdiction of the United States,' as to the courts and offices of the several states. This classification, adopted by the Eighth Congress, is carried into the Revised Statutes as follows:

> 'Sec. 905. The acts of the legislature of any state or terri- [182 U.S. 244, 278] tory, or of any country subject to the jurisdiction of the United States, shall be authenticated,' etc.
>
> 'Sec. 906. All records and exemplifications of books which may be kept in any public office of and state or territory, or of any country subject to the jurisdiction of the United States,' etc.

Unless these words are to be rejected as meaningless, we must treat them as a recognition by Congress of the fact that there may be teritories subject to the jurisdiction of the United States, which are not of the United States.

In determining the meaning of the words of article 1, section 8, 'uniform throughout the United States,' we are bound to consider, not only the provisions forbidding preference being given to the ports of one state over those of another (to which attention has already been called), but the other clauses declaring that no tax or duty shall be laid on articles exported from any state, and that no state shall, without the consent of Congress, lay any imposts or duties upon imports or exports, nor any duty on tonnage. The object of all of these was to protect the states which united in forming the Constitution from discriminations by Congress, which would operate unfairly or injuriously upon some states and not equally upon others. The opinion of Mr. Justice White in Knowlton v. Moore, 178 U.S. 41 , 44 L. ed. 969, 20 Sup. Ct. Rep. 747, contains an elaborate historical review of the proceedings in the convention, which resulted in the adoption of these different clauses and their arrangement, and he there comes to the conclusion (p. 105, L. ed. p. 995, Sup. Ct. Rep. p. 772) that 'although the provision as to preference between ports and that regarding uniformity of duties, imposts, and excises were one in purpose, one in their adoption,' they were originally placed together, and 'became separated only in arranging the

Constitution for the purpose of style.' Thus construed together, the purpose is irresistible that the words 'throughout the United States' are indistinguishable from the words 'among or between the several states,' and that these prohibitions were intended to apply only to commerce between ports of the several states as they then existed or should thereafter be admitted to the Union.

Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect [182 U.S. 244, 279] that the Constitution is applicable to territories acquired by purchase or conquest, only when and so far as Congress shall so direct. Notwithstanding its duty to 'guarantee to every state in this Union a republican form of government' (art. 4, 4), by which we understand, according to the definition of Webster, 'a government in which the supreme power resides in the whole body of the people, and is exercised by representatives elected by them,' Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois, and Wisconsin and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British Crown colony than a republican state of America, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend to Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of habeas corpus, as well as other privileges of the bill of rights.

We are also of opinion that the power to acquire territory by treaty implies, not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their status shall be in what Chief Justice Marshall termed the 'American empire.' There seems to be no middle ground between this position and the doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges and immunities of citizens. If such be their status, the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions, and modes [182 U.S. 244, 280] of life, shall become at once citizens of the United States. In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that 'the inhabitants shall be incorporated into the Union of the United States and admitted as soon as possible . . . to the enjoyment of all the rights, advantages, and immunities of citizens of the United States;' in the case of Mexico, that they should 'be incorporated into the Union, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States;' in the case of Alaska, that the inhabitants who remained three years, 'with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights,' etc; and in the case of Porto Rico and the Philippines, 'that the civil rights and political status of the native inhabitants . . . shall be determined by Congress.' In all these cases there is an implied denial of the right of the inhabitants to American citizenship until Congress by further action shall signify its assent thereto.

Grave apprehensions of danger are felt by many eminent men,-a fear lest an unrestrained possession of power on the part of Congress may lead to unjust and oppressive legislation in which the natural rights of territories, or their inhabitants, may be engulfed in a centralized despotism. These rears, however, find no justification in the action of Congress in the past century, nor in the conduct of the British Parliament towards its outlying possessions since the American Revolution. Indeed, in the only instance in which this court has declared an act of Congress unconstitutional as trespassing upon the rights of territories (the Missouri Compromise), such action was dictated by motives of humanity and justice, and so far commanded popular approval as to be embodied in the 13th Amendment to the Constitution.

There are certain principles of natural justice inherent in the Anglo-Saxon character, which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests. Even in the Foraker act itself, the constitutionality of which is so vigorously assailed, power [182 U.S. 244, 281] was given to the legislative assembly of Porto Rico to repeal the very tariff in question in this case, a power it has not seen fit to exercise. The words of Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1, 6 L. ed. 23, with respect to the power of Congress to regulate commerce, are pertinent in this connection: 'This power,' said he, 'like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are in this, as in many other instances.-as that, for example, of declaring war,-the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative governments.'

So too, in Johnson v. M'Intosh, 8 Wheat. 543, 583, 5 L. ed. 681, 691, it was said by him:

> 'The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually they are incorporated with the victorious nation and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old; and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections and united by force to strangers.
>
> 'When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he can- [182 U.S. 244, 282] not neglect them without injury to his fame and hazard to his power.'

The following remarks of Mr. Justice White in the case of Knowlton v. Moore, 178 U.S. 109 , 44 L. ed. 996, 20 Sup. Ct. Rep. 774, in which the court upheld the progressive features of the legacy tax, are also pertinent:

> 'The grave consequences which it is asserted must arise in the future if the right to levy a progressive tax be recognized involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise where an arbitrary and confiscatory exaction is imposed, bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so.'

It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race, habits, laws, and customs of the people, and from differences of soil, climate, and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race, or by scattered bodies of

native Indians.

We suggest, without intending to decide, that there may be a distinction between certain natural rights enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinions and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law, and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are in- [182 U.S. 244, 283] dispensable to a free government. Of the latter class are the rights to citizenship, to suffrage (Minor v. Happersett, 21 Wall. 162, 22 L. ed. 627), and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the states to be unnecessary to the proper protection of individuals.

Whatever may be finally decided by the American people as to the status of these islands and their inhabitants,-whether they shall be introduced into the sisterhood of states or be permitted to form independent governments,-it does not follow that in the meantime, a waiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution and subject to the merely arbitrary control of Congress. Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty, and property. This has been frequently held by this court in respect to the Chinese, even when aliens, not possessed of the political rights of citizens of the United States. Yick Wo v. Hopkins, 118 U.S. 356 , 30 L. ed. 220, 6 Sup. Ct. Rep. 1064; Fong Yue Ting v. United States, 149 U.S. 698 , 37 L. ed. 905, 13 Sup. Ct. Rep. 1016; Lem Moon Sing, 158 U.S. 538, 547 , 39 S. L. ed. 1082, 1085, 15 Sup. Ct. Rep. 962; Wong Wing v. United States, 163 U.S. 228 , 41 L. ed. 140, 16 Sup. Ct. Rep. 977. We do not desire, however, to anticipate the difficulties which would naturally arise in this connection, but merely to disclaim any intention to hold that the inhabitants of these territories are subject to an unrestrained power on the part of Congress to deal with them upon the theory that they have no rights which it is bound to respect.

Large powers must necessarily be intrusted to Congress in dealing with these problems, and we are bound to assume that they will be judiciously exercised. That these powers may be abused is possible. But the same may be said of its powers under the Constitution as well as outside of it. Human wisdom has never devised a form of government so perfect that it may not be perverted to bad purposes. It is never conclusive to argue against the possession of certain powers from possible abuses of them. It is safe to say that if Congress should venture upon legislation manifestly dictated by selfish interests, it would receive quick rebuke at the hands of the people. Indeed, it is scarcely possible that Congress could do a greater injustice [182 U.S. 244, 284] to these islands than would be involved in holding that it could not impose upon the states taxes and excises without extending the same taxes to them. Such requirement would bring them at once within our internal revenue system, including stamps, licenses, excises, and all the paraphernalia of that system, and apply it to territories which have had no experience of this kind, and where it would prove an intolerable burden.

This subject was carefully considered by the Senate committee in charge of the Foraker bill, which found, after an examination of the facts, that property in Porto Rico was already burdened with a private debt amounting probably to $30,000,000; that no system of property taxation was or ever had been in force in the island, and that it probably would require two years to inaugurate one and secure returns from it; that the revenues had always been chiefly raised by duties on imports and exports, and that our internal revenue laws, if applied in that island, would prove oppressive and ruinous to many people and interests; that to undertake to collect our heavy internal revenue tax, far heavier than Spain ever

imposed upon their products and vocations, would be to invite violations of the law so innumerable as to make prosecutions impossible, and to almost certainly alienate and destroy the friendship and good will of that people for the United States.

In passing upon the questions involved in this and kindred cases, we ought not to overlook the fact that, while the Constitution was intended to establish a permanent form of government for the states which should elect to take advantage of its conditions, and continue for an indefinite future, the vast possibilities of that future could never have entered the minds of its framers. The states had but recently emerged from a war with one of the most powerful nations of Europe, were disheartened by the failure of the confederacy, and were doubtful as to the feasibility of a stronger union. Their territory was confined to a narrow strip of land on the Atlantic coast from Canada to Florida, with a somewhat indefinite claim to territory beyond the Alleghanies, where their sovereignty was disputed by tribes of hostile Indians supported, as was popularly believed, by the British, who had never formally delivered possession [182 U.S. 244, 285] under the treaty of peace. The vast territory beyond the Mississippi, which formerly had been claimed by France, since 1762 had belonged to Spain, still a powerful nation and the owner of a great part of the Western Hemisphere. Under these circumstances it is little wonder that the question of annexing these territories was not made a subject of debate. The difficulties of bringing about a union of the states were so great, the objections to it seemed so formidable, that the whole thought of the convention centered upon surmounting these obstacles. The question of territories was dismissed with a single clause, apparently applicable only to the territories then existing, giving Congress the power to govern and dispose of them.

Had the acquisition of other territories been contemplated as a possibility, could it have been foreseen that, within little more than one hundred years, we were destined to acquire, not only the whole vast region between the Atlantic and Pacific Oceans, but the Russian possessions in America and distant islands in the Pacific, it is incredible that no provision should have been made for them, and the question whether the Constitution should or should not extend to them have been definitely settled. If it be once conceded that we are at liberty to acquire foreign territory, a presumption arises that our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories acquired by them. If, in limiting the power which Congress was to exercise within the United States, it was also intended to limit it with regard to such territories as the people of the United States should thereafter acquire, such limitations should have been expressed. Instead of that, we find the Constitution speaking only to states, except in the territorial clause, which is absolute in its terms, and suggestive of no limitations upon the power of Congress in dealing with them. The states could only delegate to Congress such powers as they themselves possessed, and as they had no power to acquire new territory they had none to delegate in that connection. The logical inference from this is that if Congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions. If, upon the other hand, we assume [182 U.S. 244, 286] that the territorial clause of the Constitution was not intended to be restricted to such territory as the United States then possessed, there is nothing in the Constitution to indicate that the power of Congress in dealing with them was intended to be restricted by any of the other provisions.

There is a provision that 'new states may be admitted by the Congress into this Union.' These words, of course, carry the Constitution with them, but nothing is said regarding the acquisition of new territories or the extension of the Constitution over them. The liberality of Congress in legislating the Constitution into all our contiguous territories has undoubtedly fostered the impression that it went there by its own force, but there is nothing in the Constitution itself, and little in the interpretation put upon it, to confirm that impression. There is not even an analogy to the provisions of an ordinary mortgage, for its attachment to after-acquired property, without which it covers only property existing at the date of the mortgage. In short, there is absolute silence upon the subject. The executive and legislative departments of the government have for more than a century interpreted this silence as precluding the idea that the

Constitution attached to these territories as soon as acquired, and unless such interpretation be manifestly contrary to the letter or spirit of the Constitution, it should be followed by the judicial department. Cooley, Const. Lim. 81-85. Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53, 57 , 28 S. L. ed. 349, 351, 4 Sup. Ct. Rep. 279; Marshall Field & Co. v. Clark, 143 U.S. 649, 691 , 36 S. L. ed. 294, 309, 12 Sup. Ct. Rep. 495.

Patriotic and intelligent men may differ widely as to the desireableness of this or that acquisition, but this is solely a political question. We can only consider this aspect of the case so far as to say that no construction of the Constitution should be adopted which would prevent Congress from considering each case upon its merits, unless the language of the instrument imperatively demand it. A false step at this time might be fatal to the development of what Chief Justice Marshall called the American empire. Choice in some cases, the natural gravitation of small bodies towards large ones in others, the result of a successful war in still others, may bring about conditions which would render the annexation of distant posses- [182 U.S. 244, 287] sions desirable. If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that ultimately our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action.

We are therefore of opinion that the island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker act is constitutional, so far as it imposes duties upon imports from such island, and that the plaintiff cannot recover back the duties exacted in this case.

The judgment of the Circuit Court is therefore affirmed.

Mr. Justice White, with whom concurred Mr. Justice Shiras and Mr. Justice McKenna, uniting in the judgment of affirmance:

Mr. Justice Brown, in announcing the judgment of affirmance, has in his opinion stated his reasons for his concurrence in such judgment. In the result I likewise concur. As, however, the reasons which cause me to do so are different from, if not in conflict with, those expressed in that opinion, if its meaning is by me not misconceived, it becomes my duty to state the convictions which control me.

The recovery sought is the amount of duty paid on merchandise which came into the United States from Porto Rico after July 1, 1900. The exaction was made in virtue of the act of Congress approved April 12, 1900, entitled 'An Act Temporarily to Provide Revenue and a Civil Government for Porto Rico, and for Other Purposes.' 31 Stat. at L. 77. The right to recover is predicated on the assumption that Porto Rico, by the ratification of the treaty with Spain, became incorporated into the [182 U.S. 244, 288] United States, and therefore the act of Congress which imposed the duty in question is repugnant to article 1, 8, clause 1, of the Constitution providing that 'the Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.' Subsidiarily, it is contended that the duty collected was also repugnant to the export and preference clauses of the Constitution. But as the case concerns no duty on goods going from the United States to Porto Rico, this proposition must depend also on the hypothesis that the provisions of the Constitution referred to apply to Porto Rico because that island has been incorporated into the United States. It is hence manifest that this latter contention is involved in the previous one, and need not be separately considered.

The arguments at bar embrace many propositions which seem to me to be irrelevant, or, if relevant, to be so contrary to reason and so in conflict with previous decisions of this court as to cause them to require but a passing notice. To eliminate all controversies of this character, and thus to come to the pivotal contentions which the case involves, let me state and concede the soundness of some principles, referring, in doing so, in the margin to the authorities by which they are sustained, and making such comment on some of them as may to me appear necessary.

First. The government of the United States was born of the Constitution, and all powers which it enjoys or may exercise must be either derived expressly or by implication from that instrument. Ever then, when an act of any department is challenged because not warranted by the Constitution, the existence of the authority is to be ascertained by determining whether the power has been conferred by the Constitution, either in express terms or by lawful implication, to be drawn from the express authority conferred, or deduced as an attribute which legitimately inheres in the nature of the powers given, and which flows from the character of the government established by the Constitution. In other words, while confined to its constitu- [182 U.S. 244, 289] tional orbit, the government of the United States is supreme within its lawful sphere. 1

Second. Every function of the government being thus derived from the Constitution, it follows that that instrument is everywhere and at all times potential in so far as its provisions are applicable. 2

Third. Hence it is that wherever a power is given by the Constitution, and there is a limitation imposed on the authority, such restriction operates upon and confines every action on the subject within its constitutional limits. 3

Fourth. Consequently it is impossible to conceive that, where conditions are brought about to which any particular provision of the Constitution applies, its controlling influence may be frustrated by the action of any or all of the departments of the government. Those departments, when discharging, within the limits of their constitutional power, the duties which rest on them, may of course deal with the subjects committed to them in such a way as to cause the matter dealt with to come under the control of provisions of the Constitution which may not have been previously applicable. But this does not conflict with the doctrine just stated, or presuppose that the Constitution may or may not be applicable at the election of any agency of the government.

Fifth. The Constitution has undoubtedly conferred on Congress the right to create such municipal organizations as it may deem best for all the territories of the United States, whether they have been incorporated or not, to give to the inhabitants as respects the local governments such degree of representation as may be conducive to the public well-being, to deprive such [182 U.S. 244, 290] territory of representative government if it is considered just to do so, and to change such local governments at discretion. 4

The plenitude of the power of Congress as just stated is conceded by both sides to this controversy. It has been manifest from the earliest days, and so many examples are afforded of it that to refer to them seems superfluous. However, there is an instance which exemplifies the exercise of the power substantially in all its forms, in such an apt way that reference is made to it. The instance referred to is the District of Columbia, which has had from the beginning different forms of government conferred upon it by Congress, some largely representative, others only partially so, until, at the present time, the people of the District live under a local government totally devoid of local representation, in the elective sense, administered solely by officers appointed by the President, Congress, in which the District has no representative in effect, acting as the local legislature.

In some adjudged cases the power to locally govern at discretion has been declared to arise as an incident to the right to acquire territory. In others it has been rested upon the clause of 3, article 4, of the Constitution, which vests Congress with the power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States. 5 But this divergence, if not conflict of opinion, does not imply that the authority of Congress to govern the territories is outside of the Constitution, since in either case the right is founded on the Constitution, although referred to different provisions of that instrument.

While, therefore, there is no express or implied limitation on Congress in exercising its power to create local governments for [182 U.S. 244, 291] any and all of the territories, by which that body is restrained from the widest latitude of discretion, it does not follow that there may not be inherent, although unexpressed, principles which are the basis of all free government which cannot be with impunity transcended. 6 But this does not suggest that every express limitation of the Constitution which is applicable has not force, but only signifies that even in cases where there is no direct command of the Constitution which applies, there may nevertheless be restrictions of so fundamental a nature that they cannot be transgressed, although not expressed in so many words in the Constitution.

Sixth. As Congress in governing the territories is subject to the Constitution, it results that all the limitations of the Constitution which are applicable to Congress in exercising this authority necessarily limit its power on this subject. It follows, also, that every provision of the Constitution which is applicable to the territories is also controlling therein. To justify a departure from this elementary principle by a criticism of the opinion of Mr. Chief Justice Taney in Scott v. Sandford, 19 How. 393, 15 L. ed. 691, appears to me to be unwarranted. Whatever may be the view entertained of the correctness of the opinion of the court in that case, in so far as it interpreted a particular provision of the Constitution concerning slavery, and decided that as so construed it was in force in the territories, this in no way affects the principle which that decision announced, that the applicable provisions of the Constitution were operative. That doctrine was concurred in by the dissenting judges, as the following excerpts demonstrate. Thus Mr. Justice McLean, in the course of his dissenting opinion, said (19 How. 542, 15 L. ed. 757):

> 'In organizing the government of a territory, Congress is limited to means appropriate to the attainment of the constitutional object. No powers can be exercised which are prohibited by the Constitution, or which are contrary to its spirit.' [182 U.S. 244, 292] Mr. Justice Curtis, also, in the dissent expressed by him, said (p. 614, L. ed. p. 787):
>
> 'If, then, this clause does contain a power to legislate respecting the territory, what are the limits of that power?
>
> 'To this I answer that, in common with all other legislative powers of Congress, it finds limits in the express prohibitions on Congress not to do certain things; that, in the exercise of the legislative power, Congress cannot pass an ex post facto law or bill of attainder; and so in respect to each of the other prohibitions contained in the Constitution.'

Seventh. In the case of the territories, as in every other instance, when a provision of the Constitution is invoked, the question which arises is, not whether the Constitution is operative, for that is self-evident, but whether the provision relied on is applicable.

Eighth. As Congress derives its authority to levy local taxes for local purposes within the territories, not from the general grant of power to tax as expressed in the Constitution, it follows that its right to locally tax is not to be measured by the provision empowering Congress 'to lay and collect taxes, duties,

imposts, and excises,' and is not restrained by the requirement of uniformity throughout the United States. But the power just referred to, as well as the qualification of uniformity, restrains Congress from imposing an impost duty on goods coming into the United States from a territory which has been incorporated into and forms a part of the United States. This results because the clause of the Constitution in question does not confer upon Congress power to impose such an impost duty on goods coming from one part of the United States to another part thereof, and such duty, besides, would be repugnant to the requirement of uniformity throughout the United States. 7

To question the principle above stated on the assumption that the rulings on this subject of Mr. Chief Justice Marshall in Loughborough borough v. Blake were mere dicta seems to me to be entirely inadmissible. And, besides, if such view was justified, [182 U.S. 244, 293] the principle would still find support in the decision in Woodruff v. Parham, and that decision, in this regard, was affirmed by this court in Brown v. Houston, 114 U.S. 622 , 29 L. ed. 257, 5 Sup. Ct. Rep. 1091 and Fairbank v. United States, 181 U.S. 283 , ante, 648, 21 Sup. Ct. Rep. 648.

From these conceded propositions it follows that Congress in legislating for Porto Rico was only empowered to act within the Constitution and subject to its applicable limitations, and that every provision of the Constitution which applied to a country situated as was that island was potential in Porto Rico.

And the determination of what particular provision of the Constitution is applicable, generally speaking, in all cases, involves an inquiry into the situation of the territory and its relations to the United States. This is well illustrated by some of the decisions of this court which are cited in the margin. 8 Some of these decisions hold on the one hand that, growing out of the presumably ephemeral nature of a territorial government, the provisions of the Constitution relating to the life tenure of judges is inapplicable to courts created by Congress, even in territories which are incorporated into the United States, and some, on the other hand, decide that the provisions as to common-law juries found in the Constitution are applicable under like conditions; that is to say, although the judge presiding over a jury need not have the constitutional tenure, yet the jury must be in accordance with the Constitution. And the application of the provision of the Constitution relating to juries has been also considered in a different aspect, the case being noted in the margin. 9

The question involved was the constitutionality of the statutes of the United States conferring power on ministers and consuls [182 U.S. 244, 294] to try American citizens for crimes committed in certain foreign countries. Rev. Stat. 4083-4086. The court held the provisions in question not to be repugnant to the Constitution, and that a conviction for a felony without a previous indictment by a grand jury, or the summoning of a petty jury, was valid.

It was decided that the provisions of the Constitution relating to grand and petty juries were inapplicable to consular courts exercising their jurisdiction in certain countries foreign to the United States. But this did not import that the government of the United States in creating and conferring jurisdiction on consuls and ministers acted outside of the Constitution, since it was expressly held that the power to call such courts into being and to confer upon them the right to try, in the foreign countries in question, American citizens, was deducible from the treaty- making power as conferred by the Constitution. The court said (p. 463, L. ed. p. 585, Sup. Ct. Rep. p. 900):

> 'The treaty-making power vested in our government extends to all proper subjects of negotiation with foreign governments. It can, equally with any of the former or present governments of Europe, make treaties providing for the exercise of judicial authority in other countries by its officers appointed to reside therein.'

In other words, the case concerned, not the question of a power outside the Constitution, but simply whether certain provisions of the Constitution were applicable to the authority exercised under the circumstances which the case presented.

Albeit, as a general rule, the status of a particular territory has to be taken in view when the applicability of any provision of the Constitution is questioned, it does not follow, when the Constitution has absolutely withheld from the government all power on a given subject, that such an inquiry is necessary. Undoubtedly there are general prohibitions in the Constitution in favor of the liberty and property of the citizen, which are not mere regulations as to the form and manner in which a conceded power may be exercised, but which are an absolute denial of all authority under any circumstances or conditions to do particular acts. In the nature of things, limitations of this char- [182 U.S. 244, 295] acter cannot be under any circumstances transcended, because of the complete absence of power.

The distinction which exists between the two characters of restrictions-those which regulate a granted power and those which withdraw all authority on a particular subject-has in effect been always conceded, even by those who most strenuously insisted on the erroneous principle that the Constitution did not apply to Congress in legislating for the territories, and was not operative in such districts of country. No one had more broadly asserted this principle than Mr. Webster. Indeed, the support which that proposition receives from expressions of that illustrious man have been mainly relied upon to sustain it, and yet there can be no doubt that, even while insisting upon such principle, it was conceded by Mr. Webster that those positive prohibitions of the Constitution which withhold all power on a particular subject were always applicable. His views of the principal proposition and his concession as to the existence of the qualification are clearly shown by a debate which took place in the Senate on February 24, 1849, on an amendment offered by Mr. Walker extending the Constitution and certain laws of the United States over California and New Mexico. Mr. Webster, in support of his conception that the Constitution did not, generally speaking, control Congress in legislating for the territories or operate in such districts, said as follows (20 Cong. Globe, App. p. 272):

> 'Mr. President, it is of importance that we should seek to have clear ideas and correct notions of the question which this amendment of the member from Wisconsin has presented to us; and especially that we should seek to get some conception of what is meant by the proposition, in a law, to 'extend the Constitution of the United States to the territories.' Why, sir, the thing is utterly impossible. All the legislation in the world, in this general form, could not accomplish it. There is no cause for the operation of the legislative power in such a matter as that. The Constitution, what is it-we extend the Constitution of the United States by law to a territory? What is the Constitution of the United States? Is not its very first principle that all within its influence and comprehension shall [182 U.S. 244, 296] be represented in the legislature which it establishes, with not only the right of debate and the right to vote in both Houses of Congress, but a right to partake in the choice of the President and Vice President? And can we by law extend these rights, or any of them, to a territory of the United States? Everybody will see that it is altogether impracticable.'

Thereupon, the following colloquy ensued between Mr. Underwood and Mr. Webster (Ibid. 281-282):

> 'Mr. Underwood: 'The learned Senator from Massachusetts says, and says most appropriately and forcibly, that the principles of the Constitution are obligatory upon us even while legislating for the territories. That is true, I admit, in its fullest force, but if it is obligatory upon us while legislating for the territories, is it possible that it will not be equally obligatory upon the officers who are appointed to administer the laws in these territories?'

> 'Mr. Webster: 'I never said it was not obligatory upon them. What I said was, that in making laws for these territories it was the high duty of Congress to regard those great principles in the Constitution intended for the security of personal liberty and for the security of property.'
>
> 'Mr. Underwood: '. . . Suppose we provide by our legislation that nobody shall be appointed to an office there who professes the Catholic religion. What do we do by an act of this sort?'
>
> 'Mr. Webster: 'We violate the Constitution, which says that no religious test shall be required as qualification for office."

And this was the state of opinion generally prevailing in the Free Soil and Republican parties, since the resistance of those parties to the extension of slavery into the territories, while in a broad sense predicated on the proposition that the Constitution was not generally controlling in the territories, was sustained by express reliance upon the 5th Amendment to the Constitution forbidding Congress from depriving any person of life, liberty, or property without due process of law. Every platform adopted by those parties down to and including 1860, while propounding the general doctrine, also in effect declared [182 U.S. 244, 297] the rule just stated. I append in the margin an excerpt from the platform of the Free Soil party adopted in 1842.10

The conceptions embodied in these resolutions were in almost identical language reiterated in the platform of the Liberty party in 1843, in that of the Free Soil party in 1852, and in the platform of the Republican party in 1856. Stanwood, Hist. of Presidency, pp. 218, 253, 254, and 271. In effect, the same thought was repeated in the declaration of principles made by the Republican party convention in 1860, when Mr. Lincoln was nominated, as will be seen from an excerpt therefrom set out in the margin. 11

The doctrine that those absolute withdrawals of power which [182 U.S. 244, 298] the Constitution has made in favor of human liberty are applicable to every condition or status has been clearly pointed out by this court in Chicago, R. I. & P. R. Co. v. McGlinn (1885) 114 U.S. 542 , 29 L. ed. 270, 5 Sup. Ct. Rep. 1005, where, speaking through Mr. Justice Field, the court said (p. 546, L. ed. p. 271, Sup. Ct. Rep. p. 1006):

> 'It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation of sovereign to another the municipal laws of the country-that is, laws which are intended for the protection of private rights-continue in force until abrogated or changed by the new government or sovereign. By the cession, public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction and legislative power-and the latter is involved in the former-to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force, without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use, and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general that a change of government leaves them in force until, by direct action of the new government, they are altered or repealed. American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 542, 7 L. ed. 255;

Halleck, International Law, chap. 34, 14.'

There is in reason, then, no room in this case to contend that Congress can destroy the liberties of the people of Porto Rico by exercising in their regard powers against freedom and justice which the Constitution has absolutely denied. There can [182 U.S. 244, 299] also be no controversy as to the right of Congress to locally govern the island of Porto Rico as its wisdom may decide, and in so doing to accord only such degree of representative government as may be determined on by that body. There can also be no contention as to the authority of Congress to levy such local taxes in Porto Rico as it may choose, even although the amount of the local burden so levied be manifold more onerous than is the duty with which this case is concerned. But as the duty in question was not a local tax, since it was levied in the United States on goods coming from Porto Rico, it follows that, if that island was a part of the United States, the duty was repugnant to the Constitution, since the authority to levy an impost duty conferred by the Constitution on Congress does not, as I have conceded, include the right to lay such a burden on goods coming from one to another part of the United States. And, besides, if Porto Rico was a part of the United States the exaction was repugnant to the uniformity clause.

The sole and only issue, then, is not whether Congress has taxed Porto Rico without representation,-for, whether the tax was local or national, it could have been imposed although Porto Rico had no representative local government and was not represented in Congress,-but is whether the particular tax in question was levied in such form as to cause it to be repugnant to the Constitution. This is to be resolved by answering the inquiry, Had Porto Rico, at the time of the passage of the act in question, been incorporated into and become an integral part of the United States?

On the one hand, it is affirmed that, although Porto Rico had been ceded by the treaty with Spain to the United States, the cession was accompanied by such conditions as prevented that island from becoming an integral part of the United States, at least temporarily and until Congress had so determined. On the other hand, it is insisted that by the fact of cession to the United States alone, irrespective of any conditions found in the treaty, Porto Rico became a part of the United States and was incorporated into it. It is incompatible with the Constitution, it is argued, for the government of the United States to accept a cession of territory from a foreign country without [182 U.S. 244, 300] complete incorporation following as an immediate result, and therefore it is contended that it is immaterial to inquire what were the conditions of the cession, since if there were any which were intended to prevent incorporation they were repugnant to the Constitution and void. The result of the argument is that the government of the United States is absolutely without power to acquire and hold territory as property or as appurtenant to the United States. These conflicting contentions are asserted to be sanctioned by many adjudications of this court and by various acts of the executive and legislative branches of the government; both sides, in many instances, referring to the same decisions and to the like acts, but deducing contrary conclusions from them. From this it comes to pass that it will be impossible to weigh the authorities relied upon without ascertaining the subject-matter to which they refer, in order to determine their proper influence. For this reason, in the orderly discussion of the controversy, I propose to consider the subject from the Constitution itself, as a matter of first impression, from that instrument as illustrated by the history of the government, and as construed by the previous decisions of this court. By this process, if accurately carried out, it will follow that the true solution of the question will be ascertained, both deductively and inductively, and the result, besides, will be adequately proved.

It may not be doubted that by the general principles of the law of nations every government which is sovereign within its sphere of action possesses as an inherent attribute the power to acquire territory by discovery, by agreement or treaty, and by conquest. It cannot also be gainsaid that, as a general rule, wherever a government acquires territory as a result of any of the modes above stated, the relation of the territory to the new government is to be determined by the acquiring power in the absence of

stipulations upon the subject. These general principles of the law of nations are thus stated by Halleck in his treatise on International Law, page 126:

> 'A state may acquire property or domain in various ways; its title may be acquired originally by mere occupancy, and confirmed by the presumption arising from the lapse of time; [182 U.S. 244, 301] or by discovery and lawful possession; or by conquest, confirmed by treaty or tacit consent; or by grant, cession, purchase, or exchange; in fine, by any of the recognized modes by which private property is acquired by individuals. It is not our object to enter into any general discussion of these several modes of acquisition, any further than may be necessary to distinguish the character of certain rights of property which are the peculiar objects of international jurisprudence. Wheaton, International Law, pt. 2, chap. 4, 1, 4, 5; 1 Phillimore, International Law, 221- 227; Grotius, de Jur. Bel. ac. Pac., lib. 2, chap. 4; Vattel, Droit des Gens, liv. 2, chaps. 7 and 11; Rutherford, Inst. b. 1, chap. 3, b. 2, chap. 9; Puffendorf, de Jur. Nat. et. Gent., lib. 4, chaps. 4-6; Moser, Versuch, etc., b. 5, chap. 9; Martens, Precis du Droit des Gens. 35 et seq.; Schmaltz, Droit des Gens, liv. 4, chap. 1; Kluber, Droit des Gens, 125, 126; Heffter, Droit International, 76; Ortolan, Domaine International, 53 et seq.; Bowyer, Universal Public Law, chap. 28; Bello, Derecho Internacional, pt. 1, chap. 4; Riquelme, Derecho, Pub. Int., lib. 1, title 1, chap. 2; Burlamaqui, Droit de la Nat. et des Gens, tome 4, pt. 3, chap. 5.'

Speaking of a change of sovereignty, Halleck says (pp. 76, 814):

> 'Chap. 3, 23. The sovereignty of a state may be lost in various ways. It may be vanquished by a foreign power, and become incorporated into the conquering state as a province or as one of its component parts; or it may voluntarily unite itself with another in such a way that its independent existence as a state will entirely cease.

... * *

> 'Chap. 33, 3. If the hostile nation be subdued and the entire state conquered, a question arises as to the manner in which the conqueror may treat it without transgressing the just bounds established by the rights of conquest. If he simply replaces the former sovereign, and, on the submission of the people, governs them according to the laws of the state, they can have no cause of complaint. Again, if he incorporate them with his former states, giving to them the rights, privileges, and immunities of his own subjects, he does for them all that is due [182 U.S. 244, 302] from a humane and equitable conqueror to his vanquished foes. But if the conquered are a fierce, savage, and restless people, he may, according to the degree of their indocility, govern them with a tighter rein, so as to curb their 'impetuosity, and to keep them under subjection.' Moreover, the rights of conquest may, in certain cases, justify him in imposing a tribute or other burthen, either a compensation for the expenses of the war or as a punishment for the injustice he has suffered from them . . . Vattel, Droit des Gens, liv. 3, ch. 13, 201; 2 Curtius, History, etc., liv. 7, cap. 8; Grotius, de Bel. ac Pac. lib. 3, caps. 8, 15; Puffendorf, de Jur. Nat. et Gent. lib. 8, cap. 6, 24; Real, Science du Gouvernement, tome 5, ch. 2, 5; Heffter, Droit International, 124; Abegg. Untersuchungen, etc., p. 86.'

In American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242, the general doctrine was thus summarized in the opinion delivered by Mr. Chief Justice Marshall (p. 542, L. ed. p. 255):

> 'If it [conquered territory] be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose.'

When our forefathers threw off their allegiance to Great Britain and established a republican government, assuredly they deemed that the nation which they called into being was endowed with those general powers to acquire territory which all independent governments in virtue of their sovereignty enjoyed. This is demonstrated by the concluding paragraph of the Declaration of Independence, which reads as follows:

> 'As free and independent states, they [the United States of America] have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do.'

That under the Confederation it was considered that the government of the United States had authority to acquire territory like any other sovereignty is clearly established by the 11th of the Articles of Confederation.

The decisions of this court leave no room for question that, under the Constitution, the government of the United States, [182 U.S. 244, 303] in virtue of its sovereignty, supreme within the sphere of its delegated power, has the full right to acquire territory enjoyed by every other sovereign nation.

In American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242, the court, by Mr. Chief Justice Marshall, said (p. 542, L. ed. p. 255):

> 'The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty.'

In United States v. Huckabee (1872) 16 Wall. 414, 21 L. ed. 457, the court speaking through Mr. Justice Clifford, said (p. 434, L. ed. p. 464):

> 'Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined; but if the nation is entirely subdued, or in case it be destroyed and ceases to exist, the right of occupation becomes permanent, and the title vests absolutely in the conqueror. American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242; 30 Hogsheads of Sugar v. Boyle, 9 Cranch, 195, 3 L. ed. 702; Shanks v. Dupont, 3 Pet. 246, 7 L. ed. 668; United States v. Rice, 4 Wheat. 254, 4 L. ed. 564; The Amy Warwick, 2 Sprague, 143, Fed. Cas. No. 342; Johnson v. M'Intosh, 8 Wheat. 588, 5 L. ed. 692. Complete conquest, by whatever mode it may be perfected, carries with it all the rights of the former government; or, in other words, the conqueror, by the completion of his conquest, becomes the absolute owner of the property conquered from the enemy nation or state. His rights are no longer limited to mere occupation of what he has taken into his actual possession, but they extend to all the property and rights of the conquered state, including even debts as well as personal and real property. Halleck, International Law, 839; Elphinstone v. Bedreechund, 1 Knapp, P. C. C. 329; Vattel, 365; 3 Phillimore, International Law, 505.'

In Church of Jesus Christ of L. D. S. v. United States (1889) 136 U.S. 1 , 34 L. ed. 478, 10 Sup. Ct. Rep. 792, Mr. Justice Bradley, announcing the opinion of the court declared (p. 42, L. ed. p. 491, Sup. Ct. Rep. p. 802):

> 'The power to acquire territory, other than the territory northwest of the Ohio river (which belonged to the United States at the adoption of the Constitution), is derived from the treaty-

> making power and the power to declare and carry [182 U.S. 244, 304] on war. The incidents of these powers are those of national sovereignty, and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty. The territory of Louisiana, when acquired from France, and the territories west of the Rocky mountains, when acquired from Mexico, became the absolute property and domain of the United States, subject to such conditions as the government, in its diplomatic negotiations, had seen fit to accept relating to the rights of the people then inhabiting those territories.'

Indeed, it is superfluous to cite authorities establishing the right of the government of the United States to acquire territory, in view of the possession of the Northwest Territory when the Constitution was framed and the cessions to the general government by various states subsequent to the adoption of the Constitution, and in view also of the vast extension of the territory of the United States brought about since the existence of the Constitution by substantially every form of acquisition known to the law of nations. Thus, in part at least, 'the title of the United States to Oregon was founded upon original discovery and actual settlement by citizens of the United States, authorized or approved by the government of the United States.' Shively v. Bowlby, 152 U.S. 50 , 38 L. ed. 349, 14 Sup. Ct. Rep. 566. The province of Louisiana was ceded by France in 1803; the Floridas were transferred by Spain in 1819; Texas was admitted into the Union by compact with Congress in 1845; California and New Mexico were acquired by the treaty with Mexico of 1848, and other western territory from Mexico by the treaty of 1853; numerous islands have been brought within the dominion of the United States under the authority of the act of August 18, 1856, chap. 164, usually designated as the Guano islands act, re-enacted in Revised Statutes, 5570-5578; Alaska was ceded by Russia in 1867; Medway island, the western end of the Hawaiian group, 1,200 miles from Honolulu, was acquired in 1867, and $50,000 was expended in efforts to make it a naval station; on the renewal of a treaty with Hawaii November 9, 1887, Pearl harbor was leased for a permanent naval station; by joint resolution of Congress the Hawaiian islands came un- [182 U.S. 244, 305] der the sovereignty of the United States in 1898; and on April 30, 1900, an act for the government of Hawaii was approved, by which the Hawaiian islands were given the status of an incorporated territory; on May 21, 1890, there was proclaimed by the President an agreement, concluded and signed with Germany and Great Britain, for the joint administration of the Samoan islands (26 Stat. at L. 1497); and on February 16, 1900 (31 Stat. at L. --, there was proclaimed a convention between the United States, Germany, and Great Britain, by which Germany and Great Britain renounced in favor of the United States all their rights and claims over and in respect to the island of Tutuilla and all other islands of the Samoan group east of longitude 171ø west of Greenwich. And finally the treaty with Spain which terminated the recent war was ratified.

It is worthy of remark that, beginning in the administration of President Jefferson, the acquisition of foreign territory above referred to were largely made while that political party was in power which announced as its fundamental tenet the duty of strictly construing the Constitution, and it is true to say that all shades of political opinion have admitted the power to acquire and lent their aid to its accomplishment. And the power has been asserted in instances where it has not been exercised. Thus, during the administration of President Pierce, in 1854, a draft of a treaty for the annexation of Hawaii was agreed upon, but, owing to the death of the King of the Hawaiian islands, was not executed. The 2d article of the proposed treaty provided as follows (Ex. Doc. Senate, 55th Congress, 2d sess., Report No. 681, Calendar No. 747, p. 91):

Article 2.

The Kingdom of the Hawaiian Islands shall be incorporated into the American Union as a state, enjoying the same degree of sovereignty as other states, and admitted as such as soon as it can be done

in consistency with the principles and requirements of the Federal Constitution, to all the rights, privileges, and immunities of a state as aforesaid, on a perfect equality with the other states of the Union.

It is insisted, however, conceding the right of the gov- [182 U.S. 244, 306] ernment of the United States to acquire territory, as all such territory when acquired becomes absolutely incorporated into the United States, every provision of the Constitution which would apply under that situation is controlling in such acquired territory. This, however, is but to admit the power to acquire, and immediately to deny its beneficial existence.

The general principle of the law of nations, already stated, is that acquired territory, in the absence of agreement to the contrary, will bear such relation to the acquiring government as may be by it determined. To concede to the government of the United States the right to acquire, and to strip it of all power to protect the birthright of its own citizens and to provide for the well being of the acquired territory by such enactments as may in view of its condition be essential, is, in effect, to say that the United States is helpless in the family of nations, and does not possess that authority which has at all times been treated as an incident of the right to acquire. Let me illustrate the accuracy of this statement. Take a case of discovery. Citizens of the United States discover an unknown island, peopled with an uncivilized race, yet rich in soil, and valuable to the United States for commercial and strategic reasons. Clearly, by the law of nations, the right to ratify such acquisition and thus to acquire the territory would pertain to the government of the United States. Johnson v. M'Intosh, 8 Wheat. 543, 595, 5 L. ed. 681, 694; Martin v. Waddell, 16 Pet. 367, 409, 10 L. ed. 997, 1012; Jones v. United States, 137 U.S. 202, 212 , 34 S. L. ed. 691, 695, 11 Sup. Ct. Rep. 80; Shively v. Bowlby, 152 U.S. 1, 50 , 38 S. L. ed. 331, 349, 14 Sup. Ct. Rep. 548. Can it be denied that such right could not be practically exercised if the result would be to endow the inhabitants with citizenship of the United States and to subject them, not only to local, but also to an equal proportion of national, taxes, even although the consequence would be to entail ruin on the discovered territory, and to inflict grave detriment on the United States, to arise both from the dislocation of its fiscal system and the immediate bestowal of citizenship on those absolutely unfit to receive it?

The practice of the government has been otherwise. As early as 1856 Congress enacted the Guano islands act, heretofore referred to, which by 1 provided that when any [182 U.S. 244, 307] citizen of the United States shall 'discover a deposit of guano on any island, rock, or key not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and shall take peaceable possession thereof, and occupy the same, said island, rock, or key may, at the discretion of the President of the United States, be considered as appertaining to the United States.' 11 Stat. at L. 119, chap. 164; Rev. Stat. 5570. Under the act referred to, it was stated in argument, that the government now holds and protects American citizens in the occupation of some seventy islands. The statute came under consideration in Jones v. United States, 137 U.S. 202 , 34 L. ed. 691, 11 Sup. Ct. Rep. 80, where the question was whether or not the act was valid, and it was decided that the act was a lawful exercise of power, and that islands thus acquired were 'appurtenant' to the United States. The court, in the course of the opinion, speaking through Mr. Justice Gray, said (p. 212, L. ed. p. 695, Sup. Ct. Rep. p. 83):

> 'By the law of nations, recognized by all civilized states, dominion of new territory may be acquired by discovery and occupation, as well as by cession or conquest; and when citizens or subjects of one nation, in its name and by its authority or with its assent, take and hold actual, continuous, and useful possession (although only for the purpose of carrying on a particular business, such as catching and curing fish or working mines) of territory unoccupied by any other government of its citizens, the nation to which they belong may exercise such jurisdiction and for

> such period as it sees fit over territory so acquired. This principle affords ample warrant for the legislation of Congress concerning guano islands. Vattel, lib. 1, chap. 18; Wheaton, International Law, 8th ed. 161, 165, 176, note 104; Halleck, International Law, chap. 6, 7, 15; 1 Phillimore, International Law, 3d ed. 227, 229, 230, 232, 242; 1 Calvo, Droit International, 4th ed. 266, 277, 300; Whiton v. Albany City Ins. Co. 109 Mass. 24, 31.

And these considerations concerning discovery are equally applicable to ownership resulting from conquest. A just war is declared, and in its prosecution the territory of the enemy is invaded and occupied. Would not the war, even if waged successfully, be fraught with danger if the effect of occupation was [182 U.S. 244, 308] to necessarily incorporate an alien and hostile people into the United States? Take another illustration. Suppose at the termination of a war the hostile government had been overthrown, and the entire territory or a portion thereof was occupied by the United States, and there was no government to treat with or none willing to cede by treaty, and thus it became necessary for the United States to hold the conquered country for an indefinite period, or at least until such time as Congress deemed that it should be either released or retained because it was apt for incorporation into the United States. If holding was to have the effect which is now claimed for it, would not the exercise of judgment respecting the retention be so fraught with danger to the American people that it could not be safely exercised?

Yet again. Suppose the United States, in consequence of outrages perpetrated upon its citizens, was obliged to move its armies or send its fleets to obtain redress, and it came to pass that an expensive war resulted and culminated in the occupation of a portion of the territory of the enemy, and that the retention of such territory-an event illustrated by examples in history-could alone enable the United States to recover the pecuniary loss it had suffered. And suppose, further, that to do so would require occupation for an indefinite period, dependent upon whether or not payment was made of the required indemnity. It being true that incorporation must necessarily follow the retention of the territory, it would result that the United States must abandon all hope of recouping itself for the loss suffered by the unjust war, and hence the whole burden would be entailed upon the people of the United States. This would be a necessary consequence, because if the United States did not hold the territory as security for the needed indemnity it could not collect such indemnity, and, on the other hand, if incorporation must follow from holding the territory the uniformity provision of the Constitution would prevent the assessment of the cost of the war solely upon the newly acquired country. In this, as in the case of discovery, the traditions and practices of the government demonstrate the unsoundness of the contention. Congress on May 13, 1846, declared that [182 U.S. 244, 309] war existed with Mexico. In the summer of that year New Mexico and California were subdued by the American arms, and the military occupation which followed continued until after the treaty of peace was ratified, in May, 1848. Tampico, a Mexican port, was occupied by our forces on November 15, 1846, and possession was not surrendered until after the ratification. In the spring of 1847 President Polk, through the Secretary of the Treasury, prepared a tariff of duties on imports and tonnage which was put in force in the conquered country. 1 Senate Documents, First Session, 30th Congress, pp. 562, 569. By this tariff, duties were laid as well on merchandise, exported from the United States as from other countries, except as to supplies for our army, and on May 10, 1847, an exemption from tonnage duties was accorded to 'all vessels chartered by the United States to convey supplies of any and all descriptions to our army and navy, and actually laden with supplies.' Ibid. 583. An interesting debate respecting the constitutionality of this action of the President is contained in 18 Cong. Globe, First Session, 30th Congress, at pp. 478, 479, 484-489, 495, 498, etc.

In Fleming v. Page, 9 How. 603, 13 L. ed. 276, it was held that the revenue officials properly treated Tampico as a port of a foreign country during the occupation by the military forces of the United States, and that duties on imports into the United States from Tampico were lawfully levied under the general tariff act of 1846. Thus, although Tampico was in the possession of the United States, and the court

expressly held that in an international sense the port was a part of the territory of the United States, yet it was decided that in the sense of the revenue laws Tampico was a foreign country. The special tariff act promulgated by President Polk was in force in New Mexico and California until after notice was received of the ratification of the treaty of peace. In Cross v. Harrison, 16 How. 164, 14 L. ed. 889, certain collections of impost duties on goods brought from foreign countries into California prior to the time when official notification had been received in California that the treaty of cession had been ratified, as well as impost duties levied after the receipt of such notice, were called in question. The duties collected prior to the receipt of notice were laid at the rate fixed by the tariff promulgated by the Presi- [182 U.S. 244, 310] dent; those laid after the notification conformed to the general tariff laws of the United States. The court decided that all the duties collected were valid. The court undoubtedly in the course of its opinion said that immediately upon the ratification of the treaty California became a part of the United States and subject to its revenue laws. However, the opinion pointedly referred to a letter of the Secretary of the Treasury directing the enforcement of the tariff laws of the United States, upon the express ground that Congress had enacted laws which recognized the treaty of cession. Besides, the decision was expressly placed upon the conditions of the treaty, and it was stated, in so many words, that a different rule would have been applied had the stipulations in the treaty been of a different character.

But, it is argued, all the instances previously referred to may be conceded, for they but illustrate the rule inter arma sitent leges. Hence, they do not apply to acts done after the cessation of hostilities when a treaty of peace has been concluded. This not only begs the question, but also embodies a fallacy. A case has been supposed in which it was impossible to make a treaty because of the unwillingness or disappearance of the hostile government, and therefore the occupation necessarily continued, although actual war had ceased. The fallacy lies in admitting the right to exercise the power, if only it is exerted by the military arm of the government, but denying it wherever the civil power comes in to regulate and make the conditions more in accord with the spirit of our free institutions. Why it can be thought, although under the Constitution the military arm of the government is in effect the creature of Congress, that such arm may exercise a power without violating the Constitution, and yet Congress-the creator-may not regulate, I fail to comprehend.

This further argument, however, is advanced. Granting that Congress may regulate without incorporating, where the military arm has taken possession of foreign territory, and where there has been or can be no treaty, this does not concern the decision of this case, since there is here involved no regulation, but an actual cession to the United States of territory by treaty. The general rule of the law of nations, by which the acquiring [182 U.S. 244, 311] government fixes the status of acquired territory, it is urged, does not apply to the government of the United States, because it is incompatible with the Constitution that that government should hold territory under a cession and administer it as a dependency without its becoming incorporated. This claim, I have previously said, rests on the erroneous assumption that the United States under the Constitution is stripped of those powers which are absolutely inherent in and essential to national existnece. The certainty of this is illustrated by the examples already made use of in the supposed cases of discovery and conquest.

If the authority by treaty is limited as is suggested, then it will be impossible to terminate a successful war by acquiring territory through a treaty, without immediately incorporating such territory into the United States. Let me, however, eliminate the case of war, and consider the treaty-making power as subserving the purposes of the peaceful evolution of national life. Suppose the necessity of acquiring a naval station or a coaling station on an island inhabited with people utterly unfit for American citizenship and totally incapable of bearing their proportionate burden of the national expense. Could such island, under the rule which is now insisted upon, be taken? Suppose, again, the acquisition of territory for an interoceanic canal, where an inhabited strip of land on either side is essential to the United States for the preservation of the work. Can it be denied that, if the requirements of the

Constitution as to taxation are to immediately control, it might be impossible by treaty to accomplish the desired result?

While no particular provision of the Constitution is referred to, to sustain the argument that it is impossible to acquire territory by treaty without immediate and absolute incorporation, it is said that the spirit of the Constitution excludes the conception of property or dependencies possessed by the United States and which are not so completely incorporated as to be in all respects a part of the United States; that the theory upon which the Constitution proceeds is that of confederated and independent states, and that no territory, therefore, can be acquired which does not contemplate statehood, and excludes the acquisition of [182 U.S. 244, 312] any territory which is not in a position to be treated as an integral part of the United States. But this reasoning is based on political, and not judicial, considerations. Conceding that the conception upon which the Constitution proceeds is that no territory, as a general rule, should be acquired unless the territory may reasonably be expected to be worthy of statehood, the determination of when such blessing is to be bestowed is wholly a political question, and the aid of the judiciary cannot be invoked to usurp political discretion in order to save the Constitution from imaginary or even real dangers. The Constitution may not be saved by destroying its fundamental limitations.

Let me come, however, to a consideration of the express powers which are conferred by the Constitution, to show how unwarranted is the principle of immediate incorporation, which is here so strenuously insisted on. In doing so it is conceded at once that the true rule of construction is not to consider one provision of the Constitution alone, but to contemplate all, and therefore to limit one conceded attribute by those qualifications which naturally result from the other powers granted by that instrument, so that the whole may be interpreted by the spirit which vivifies, and not by the letter which killeth. Undoubtedly, the power to carry on war and to make treaties implies also the exercise of those incidents which ordinarily inhere in them. Indeed, in view of the rule of construction which I have just conceded-that all powers conferred by the Constitution must be interpreted with reference to the nature of the government and be construed in harmony with related provisions of the Constitution-it seems to me impossible to conceive that the treaty-making power by a mere cession can incorporate an alien people into the United States without the express or implied approval of Congress. And from this it must follow that there can be no foundation for the assertion that, where the treaty-making power has inserted conditions which preclude incorporation until Congress has acted in respect thereto, such conditions are void and incorporation results in spite thereof. If the treaty-making power can absolutely, without the consent of Congress, incorporate territory, and if that power may [182 U.S. 244, 313] not insert conditions against incorporation, it must follow that the treaty-making power is endowed by the Constitution with the most unlimited right, susceptible of destroying every other provision of the Constitution; that is, it may wreck our institutions. If the proposition be true, then millions of inhabitants of alien territory, if acquired by treaty, can, without the desire or consent of the people of the United States speaking through Congress, be immediately and irrevocably incorporated into the United States, and the whole structure of the government be overthrown. While thus aggrandizing the treaty-making power on the one hand, the construction at the same time minimizes it on the other, in that it strips that authority of any right to acquire territory upon any condition which would guard the people of the United States from the evil of immediate incorporation. The treaty-making power, then, under this contention, instead of having the symmetrical functions which belong to it from its very nature, becomes distorted,-vested with the right to destroy upon the one hand, and deprived of all power to protect the government on the other.

And, looked at from another point of view, the effect of the principle asserted is equally antagonistic, not only to the express provisions, but to the spirit of the Constitution in other respects. Thus, if it be true that the treaty-making power has the authority which is asserted, what becomes of that branch of Congress which is peculiarly the representative of the people of the United States, and what is left of the

functions of that body under the Constitution? For, although the House of Representatives might be unwilling to agree to the incorporation of alien races, it would be impotent to prevent its accomplishment, and the express provisions conferring upon Congress the power to regulate commerce, the right to raise revenue,-bills for which, by the Constitution, must originate in the House of Representatives,-and the authority to prescribe uniform naturalization laws, would be in effect set at naught by the treaty-making power. And the consequent result-incorporation-would be beyond all future control of or remedy by the American people, since, at once and without hope of redress or power of change, incorporation by the treaty would have been brought about. [182 U.S. 244, 314] The inconsistency of the position is at once manifest. The basis of the argument is that the treaty must be considered to have incorporated, because acquisition presupposes the exercise of judgment as to fitness for immediate incorporation. But the deduction drawn is, although the judgment exercised is against immediate incorporation and this result is plainly expressed, the conditions are void because no judgment against incorporation can be called into play.

All the confusion and dangers above indicated, however, it is argued, are more imaginary than real, since, although it be conceded that the treaty-making power has the right by cession to incorporate without the consent of Congress, that body may correct the evil by availing itself of the provision of the Constitution giving to Congress the right to dispose of the territory and other property of the United States. This assumes that there has been absolute incorporation by the treaty-making power on the one hand, and yet asserts that Congress may deal with the territory as if it had not been incorporated into the United States. In other words, the argument adopts conflicting theories of the Constitution, and applies them both at the same time. I am not unmindful that there has been some contrariety of decision on the subject of the meaning of the clause empowering Congress to dispose of the territories and other property of the United States, some adjudged cases treating that article as referring to property as such, and others deriving from it the general grant of power to govern territories. In view, however, of the relations of the territories to the government of the United States at the time of the adoption of the Constitution, and the solemn pledge then existing that they should forever 'remain a part of the Confederacy of the United States of America,' I cannot resist the belief that the theory that the disposing clause relates as well to a relinquishment or cession of sovereignty as to a mere transfer of rights of property is altogether erroneous.

Observe, again, the inconsistency of this argument. It considers, on the one hand, that so vital is the question of incorporation that no alien territory may be acquired by a cession without absolutely endowing the territory with incorporation and [182 U.S. 244, 315] the inhabitants with resulting citizenship, because, under our system of government, the assumption that a territory and its inhabitants may be held by any other title than one incorporating is impossible to be thought of. And yet, to avoid the evil consequences which must follow from accepting this proposition, the argument is that all citizenship of the United States is precarious and fleeting, subject to be sold at any moment like any other property. That is to say, to protect a newly acquired people in their presumed rights, it is essential to degrade the whole body of American citizenship.

The reasoning which has sometimes been indulged in by those who asserted that the Constitution was not at all operative in the territories is that, as they were acquired by purchase, the right to buy included the right to sell. This has been met by the proposition that if the country purchased and its inhabitants became incorporated into the United States, it came under the shelter of the Constitution, and no power existed to sell American citizens. In conformity to the principles which I have admitted it is impossible for me to say at one and the same time that territory is an integral part of the United States protected by the Constitution, and yet the safeguards, privileges, rights, and immunities which arise from this situation are so ephemeral in their character that by a mere act of sale they may be destroyed. And applying this reasoning to the provisions of the treaty under consideration, to me it seems indubitable that if the treaty with Spain incorporated all the territory ceded into the United States, it resulted that the

millions of people to whom that treaty related were, without the consent of the American people as expressed by Congress, and without any hope of relief, indissolubly made a part of our common country.

Undoubtedly, the thought that under the Constitution power to dispose of people and territory, and thus to annihilate the rights of American citizens, was contrary to the conceptions of the Constitution entertained by Washington and Jefferson. In the written suggestions of Mr. Jefferson, when Secretary of State, reported to President Washington in March, 1792, on the subject of proposed negotiations between the United States and Spain, which were intended to be communicated by way of in- [182 U.S. 244, 316] struction to the commissioners of the United States appointed to manage such negotiations, it was observed, in discussing the possibility as to compensation being demanded by Spain 'for the ascertainment of our right' to navigate the lower part of the Mississippi, as follows:

> 'We have nothing else' (than a relinquishment of certain claims on Spain) 'to give in exchange. For as to territory, we have neither the right nor the disposition to alienate an inch of what belongs to any member of our Union. Such a proposition therefore is totally inadmissible, and not to be treated for a moment.' Ford's Writings of Jefferson, vol. 5, p. 476.

The rough draft of these observations was submitted to Mr. Hamilton, then Secretary of the Treasury, for suggestions, previously to sending it to the President, some time before March 5, and Hamilton made the following (among other) notes upon it:

> 'Page 25. Is it true that the United States have no right to alienate an inch of the territory in question, except in the case of necessity intimated in another place? Or will it be useful to avow the denial of such a right? It is apprehended that the doctrine which restricts the alienation of territory to cases of extreme necessity is applicable rather to peopled territory than to waste and uninhabited districts. Positions restraining the right of the United States to accommodate to exigencies which may arise ought ever to be advanced with great caution.' Ford's Writings of Jefferson, vol. 5, p. 443.

Respecting this note, Mr. Jefferson commented as follows:

> 'The power to alienate the unpeopled territories of any state is not among the enumerated powers given by the Constitution to the general government, and if we may go out of that instrument and accommodate to exigencies which may arise by alienating the unpeopled territory of a state, we may accommodate ourselves a little more by alienating that which is peopled, and still a little more by selling the people themselves. A shade or two more in the degree of exigency is all that will be requisite, and of that degree we shall ourselves be the judges. However, may it not be hoped that these questions are forever laid to rest by the 12th Amendment once made a part of the Constitution, declaring expressly that 'the powers not delegated to the [182 U.S. 244, 317] United States by the Constitution are reserved to the states respectively?' And if the general government has no power to alienate the territory of a state, it is too irresistible an argument to deny ourselves the use of it on the present occasion.' Ibid.

The opinions of Mr. Jefferson, however, met the approval of President Washington. On March 18, 1792, in inclosing to the commissioners to Spain their commission, he said, among other things:

> 'You will herewith receive your commission; as also observations on these several subjects reported to the President and approved by him, which will therefore serve as instructions for you. These expressing minutely the sense of our government, and what they wish to have done, it is

> unnecessary for me to do more here than desire you to pursue these objects unremittingly,' etc. Ford's Writings of Jefferson, vol. 5, p. 456.

When the subject-matter to which the negotiations related is considered, it becomes evident that the word 'state' as above used related merely to territory which was either claimed by some of the states, as Mississippi territory was by Georgia, or to the Northwest Territory, embraced within the ordinance of 1787, or the territory south of the Ohio (Tennessee), which had also been endowed with all the rights and privileges conferred by that ordinance, and all which territory had originally been ceded by states to the United States under express stipulations that such ceded territory should be ultimately formed into states of the Union. And this meaning of the word 'state' is absolutely in accord with what I shall hereafter have occasion to demonstrate was the conception entertained by Mr. Jefferson of what constituted the United States.

True, from the exigency of a calamitous war or the necessity of a settlement of boundaries, it may be that citizens of the United States may be expatriated by the action of the treaty-making power, impliedly or expressly ratified by Congress.

But the arising of these particular conditions cannot justify the general proposition that territory which is an integral part of the United States may, as a mere act of sale, be disposed of. If, however, the right to dispose of an incorporated American territory and citizens by the mere exertion of the power to sell [182 U.S. 244, 318] be conceded, arguendo, it would not relieve the dilemma. It is ever true that, where a malign principle is adopted, as long as the error is adhered to it must continue to produce its baleful results. Certainly, if there be no power to acquire subject to a condition, it must follow that there is no authority to dispose of subject to conditions, since it cannot be that the mere change of form of the transaction could bestow a power which the Constitution has not conferred. It would follow, then, that any conditions annexed to a disposition which looked to the protection of the people of the United States, or to enable them to safeguard the disposal of territory, would be void; and thus it would be that either the United States must hold on absolutely, or must dispose of unconditionally.

A practical illustration will at once make the consequences clear. Suppose Congress should determine that the millions of inhabitants of the Philippine islands should not continue appurtenant to the United States, but that they should be allowed to establish an autonomous government, outside of the Constitution of the United States, coupled, however, with such conditions providing for control as far only as essential to the guaranty of life and property and to protect against foreign encroachment. If the proposition of incorporation be well founded, at once the question would arise whether the ability to impose these conditions existed, since no power was conferred by the Constitution to annex conditions which would limit the disposition. And if it be that the question of whether territory is immediately fit for incorporation when it is acquired is a judicial, and not a legislative one, it would follow that the validity of the conditions would also come within the scope of judicial authority, and thus the entire political policy of the government be alone controlled by the judiciary.

The theory as to the treaty-making power upon which the argument which has just been commented upon rests, it is now proposed to be shown, is refuted by the history of the government from the beginning. There has not been a single cession made from the time of the Confederation up to the present day, excluding the recent treaty with Spain, which has not contained stipulations to the effect that the United States through Con- [182 U.S. 244, 319] gress would either not disincorporate or would incorporate the ceded territory into the United States. There were such conditions in the deed of cession by Virginia when it conveyed the Northwest Territory to the United States. Like conditions were attached by North Carolina to the cession whereby the territory south of the Ohio, now Tennessee, was transferred. Similar provisions were contained in the cession by Georgia of the Mississippi territory,

now the states of Alabama and Mississippi. Such agreements were also expressed in the treaty of 1803, ceding Louisiana; that of 1819, ceding the Floridas, and in the treaties of 1848 and 1853, by which a large extent of territory was ceded to this country, as also in the Alaska treaty of 1867. To adopt the limitations on the treaty-making power now insisted upon would presuppose that every one of these conditions thus sedulously provided for were superfluous, since the guaranties which they afforded would have obtained, although they were not expressly provided for.

When the various treaties by which foreign territory has been acquired are considered in the light of the circumstances which surrounded them, it becomes to my mind clearly established that the treaty-making power was always deemed to be devoid of authority to incorporate territory into the United States without the assent, express or implied, of Congress, and that no question to the contrary has ever been even mooted. To appreciate this it is essential to bear in mind what the words 'United States' signified at the time of the adoption of the Constitution. When by the treaty of peace with Great Britain the independence of the United States was acknowledged, it is unquestioned that all the territory within the boundaries defined in that treaty, whatever may have been the disputes as to title, substantially belonged to particular states. The entire territory was part of the United States, and all the native white inhabitants were citizens of the United States and endowed with the rights and privileges arising from that relation. When, as has already been said, the Northwest Territory was ceded by Virginia, it was expressly stipulated that the rights of the inhabitants in this regard should be respected. The ordinance of 1787, providing for the government of the Northwest Territory, fulfilled [182 U.S. 244, 320] this promise on behalf of the Confederation. Without undertaking to reproduce the text of the ordinance, it suffices to say that in contained a bill of rights, a promise of ultimate statehood, and it provided (italics mine) that 'the said territory and the states which may be formed therein shall ever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made, and to all the acts and ordinances of the United States in Congress assembled, conformably thereto.' It submitted the inhabitants to a liability for a tax to pay their proportional part of the public debt and the expenses of the government, to be assessed by the rule of apportionment which governed the states of the Confederation. It forbade slavery within the territory, and contained a stipulation that the provisions of the ordinance should ever remain unalterable unless by common consent.

Thus it was at the adoption of the Constitution, the United States, as a geographical unit and as a governmental conception both in the international and domestic sense, consisted not only of states, but also of territories, all the native white inhabitants being endowed with citizenship, protected by pledges of a common union, and, except as to political advantages, all enjoying equal rights and freedom, and safeguarded by substantially similar guaranties, all being under the obligation to contribute their proportionate share for the liquidation of the debt and future expenses of the general government.

The opinion has been expressed that the ordinance of 1787 became inoperative and a nullity on the adoption of the Constitution (Taney, Ch. J., in Scott v. Sandford, 19 How. 438, 15 L. ed. 713), while, on the other hand, it has been said that the ordinance of 1787 was 'the most solemn of all engagements,' and became a part of the Constitution of the United States by reason of the 6th article, which provided that 'all debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.' Per Baldwin, J., concurring opinion in Pollard v. Kibbe, 14 Pet. 417, 10 L. ed. 521, and per Catron, J ., in dissenting opinion in Stra- [182 U.S. 244, 321] der. Graham, 10 How. 98, 13 L. ed. 343. Whatever view may be taken of this difference of legal opinion, my mind refuses to assent to the conclusion that under the Constitution the provision of the Northwest Territory ordinance making such territory forever a part of the Confederation was not binding on the government of the United States when the Constitution was formed. When it is borne in mind that large tracts of this territory were reserved for distribution among the Continental soldiers, it is impossible for me to believe that it was ever considered that the result of

the cession was to take the Northwest Territory out of the Union, the necessary effect of which would have been to expatriate the very men who by their suffering and valor had secured the liberty of their united country. Can it be conceived that North Carolina, after the adoption of the Constitution, would cede to the general government the territory south of the Ohio river, intending thereby to expatriate those dauntless mountaineers of North Carolina who had shed lustre upon the Revolutionary arms by the victory of King's mountain? And the rights bestowed by Congress after the adoption of the Constitution, as I shall proceed to demonstrate, were utterly incompatible with such a theory.

Beyond question, in one of the early laws enacted at the first session of the First Congress, the binding force of the ordinance was recognized, and certain of its provisions concerning the appointment of officers in the territory were amended to conform the ordinance to the new Constitution. 1 Stat. at L. 50, chap. 8.

In view of this it cannot, it seems to me, be doubted that the United States continued to be composed of states and territories, all forming an integral part thereof and incorporated therein, as was the case prior to the adoption of the Constitution. Subsequently, the territory now embraced in the state of Tennessee was ceded to the United States by the state of North Carolina. In order to insure the rights of the native inhabitants, it was expressly stipulated that the inhabitants of the ceded territory should enjoy all the rights, privileges, benefits, and advantages set forth in the ordinance 'of the late Congress for the government of the western territory of the United [182 U.S. 244, 322] States.' A condition was, however, inserted in the cession, that no regulation should be made by Congress tending to emancipate slaves. By act of April 2, 1790 (1 Stat. at L. 106, chap. 6) this cession was accepted. And at the same session, on May 26, 1790, an act was passed for the government of this territory, under the designation of 'the territory of the United States south of the Ohio river.' 1 Stat. at L. 123, chap. 14. This act, except as to the prohibition which was found in the Northwest Territory ordinance as to slavery, in express terms declared that the inhabitants of the territory should enjoy all the rights conferred by that ordinance.

A government for the Mississippi territory was organized on April 7, 1798. 1 Stat. at L. 549, chap. 28. The land embraced was claimed by the state of Georgia, and her rights were saved by the act. The 6th section thereof provided as follows:

> 'Sec. 6. And be it further enacted, That from and after the establishment of the said government, the people of the aforesaid territory shall be entitled to and enjoy, all and singular, the rights, privileges, and advantages granted to the people of the territory of the United States northwest of the river Ohio, in and by the aforesaid ordinance of the thirteenth day of July, in the year one thousand seven hundred and eighty-seven, in as full and ample a manner as the same are possessed and enjoyed by the people of the said last-mentioned territory.'

Thus clearly defined by boundaries, by common citizenship, by like guaranties, stood the United States when the plan of acquiring by purchase from France the province of Louisiana was conceived by President Jefferson. Naturally, the suggestion which arose was the power on the part of the government of the United States, under the Constitution, to incorporate into the United States-a Union then composed, as I have stated, of states and territories-a foreign province inhabited by an alien people, and thus make them partakers in the American commonwealth. Mr. Jefferson, not doubting the power of the United States to acquire, consulted Attorney General Lincoln as to the right by treaty to stipulate for incorporation. By that officer Mr. Jefferson was, in effect, advised that the power to incorporate, that is, to share the privileges and im- [182 U.S. 244, 323] munities of the people of the United States with a foreign population, required the consent of the people of the United States, and it was suggested, therefore, that if a treaty of cession were made containing such agreements it should be put in the form of a change of boundaries, instead of a cession, so as thereby to bring the territory within the United

States. The letter of Mr. Lincoln was sent by President Jefferson to Mr. Gallatin, the Secretary of the Treasury. Mr. Gallatin did not agree as to the propriety of the expedient suggested by Mr. Lincoln. In a letter to President Jefferson, in effect so stating, he said:

> 'But does any constitutional objection really exist? To me it would appear (1) that the United States as a nation have an inherent right to acquire territory; (2) that whenever that acquisition is by treaty, the same constituted authorities in which the treaty-making power is vested have a constitutional right to sanction the acquisition; (3) that whenever the territory has been acquired Congress have the power either of admitting into the Union as a new state, or of annexing to a state, with the consent of that state, or of making regulations for the government of such territory.' Gallatin's Writings, vol. 1, p. 11, etc.

To this letter President Jefferson replied in January, 1803, clearly showing that he thought there was no question whatever of the right of the United States to acquire, but that he did not believe incorporation could be stipulated for and carried into effect without the consent of the people of the United States. He said (italics mine):

> 'You are right, in my opinion, as to Mr. L.'s proposition: There is no constitutional difficulty as to the acquisition of territory, and whether when acquired it may be taken into the Union by the Constitution as it now stands will become a question of expediency. I think it will be safer not to permit the enlargement of the Union but by amendment of the Constitution.' Gallatin's Writings, vol. 1, p. 115.

And the views of Mr. Madison, then Secretary of State, exactly conformed to those of President Jefferson, for, on March 2, 1803, in a letter to the commissioners who were negotiating the treaty, he said:

> 'To incorporate the inhabitants of the hereby ceded territory [182 U.S. 244, 324] with the citizens of the United States, being a provision which cannot now be made, it is to be expected from the character and policy of the United States that such incorporation will take place without unnecessary delay.' 2 State Papers, 540.

Let us pause for a moment to accentuate the irreconcilable conflict which exists between the interpretation given to the Constitution at the time of the Louisiana treaty by Jefferson and Madison, and the import of that instrument as now insisted upon. You are to negotiate, said Madison to the commissioners, to obtain a cession of the territory, but you must not under any circumstances agree 'to incorporate the inhabitants of the hereby ceded territory with the citizens of the United States, being a provision which cannot now be made.' Under the theory now urged, Mr. Madison should have said: You are to negotiate for the cession of the territory of Louisiana to the United States, and if deemed by you expedient in accomplishing this purpose, you may provide for the immediate incorporation of the inhabitants of the acquired territory into the United States. This you can freely do because the Constitution of the United States has conferred upon the treaty-making power the absolute right to bring all the alien people residing in acquired territory into the United States, and thus divide with them the rights which peculiarly belong to the citizens of the United States. Indeed, it is immaterial whether you make such agreements, since by the effect of the Constitution, without reference to any agreements which you may make for that purpose, all the alien territory and its inhabitants will instantly become incorporated into the United States if the territory is acquired.

Without going into details, it suffices to say that a compliance with the instructions given them would have prevented the negotiators on behalf of the United States from inserting in the treaty any provision

looking even to the ultimate incorporation of the acquired territory into the United States. In view of the emergency and exigencies of the negotiations, however, the commissioners were constrained to make such a stipulation, and the treaty provided as follows:

> 'Art. 3. The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted [182 U.S. 244, 325] as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.' 8 Stat. at L. 202.

Weighing the provisions just quoted, it is evident they refute the theory of incorporation arising at once from the mere force of a treaty, even although such result be directly contrary to any provisions which a treaty may contain. Mark the language. It expresses a promise: 'The inhabitants of the ceded territory shall be incorporated in the Union of the United States. . . .' Observe how guardedly the fulfilment of this pledge is postponed until its accomplishment is made possible by the will of the American people, since it is to be executed only 'as soon as possible according to the principles of the Federal Constitution.' If the view now urged be true, this wise circumspection was unnecessary, and, indeed, as I have previously said, the entire proviso was superfluous, since everything which it assured for the future was immediately and unalterably to arise.

It is said, however, that the treaty for the purchase of Louisiana took for granted that the territory ceded would be immediately incorporated into the United States, and hence the guaranties contained in the treaty related, not to such incorporation, but was a pledge that the ceded territory was to be made a part of the Union as a state. The minutest analysis, however, of the clauses of the treaty, fails to disclose any reference to a promise of statehood, and hence it can only be that the pledges made referred to incorporation into the United States. This will further appear when the opinions of Jefferson and Madison and their acts on the subject are reviewed. The argument proceeds upon the theory that the words of the treaty, 'shall be incorporated into the Union of the United States,' could only have referred to a promise of statehood, since the then existing and incorporated territories were not a part of the Union of the United States, as that Union consisted only of the states. But this has been shown to be unfounded, [182 U.S. 244, 326] since the 'Union of the United States' was composed of states and territories, both having been embraced within the boundaries fixed by the treaty of peace between Great Britain and the United States which terminated the Revolutionary War, the latter, the territories, embracing districts of country which were ceded by the states to the United States under the express pledge that they should forever remain a part thereof. That this conception of the Union composing the United States was the understanding of Jefferson and Madison, and indeed of all those who participated in the events which preceded and led up to the Louisiana treaty, results from what I have already said, and will be additionally demonstrated by statements to be hereafter made. Again, the inconsistency of the argument is evident. Thus, while the premise upon which it proceeds is that foreign territory, when acquired, becomes at once a part of the United States, despite conditions in the treaty expressly excluding such consequence, it yet endeavors to escape the refutation of such theory which arises from the history of the government by the contention that the territories which were a part of the United States were not component constituents of the Union which composed the United States. I do not understand how foreign territory which has been acquired by treaty can be asserted to have been absolutely incorporated into the United States as a part thereof despite conditions to the contrary inserted in the treaty, and yet the assertion be made that the territories which, as I have said, were in the United States originally as a part of the states, and which were ceded by them upon express condition that they should forever so remain a part of the United States, were not a part of the Union composing the United States. The argument, indeed, reduces itself to this, that for the purpose of incorporating foreign territory into the United States domestic territory must be disincorporated. In other words, that the Union must be, at least in theory, dismembered for the purpose of maintaining the doctrine of the

immediate incorporation of alien territory.

That Mr. Jefferson deemed the provision of the treaty relating to incorporation to be repugnant to the Constitution is unquestioned. While he conceded, as has been seen, the right [182 U.S. 244, 327] to acquire, he doubted the power to incorporate the territory into the United States without the consent of the people by a consitutional amendment. In July, 1803, he proposed two drafts of a proposed amendment, which he thought ought to be submitted to the people of the United States to enable them to ratify the terms of the treaty. The first of these, which is dated July, 1803, is printed in the margin. 12

The second and revised amendment was as follows:

> 'Louisiana, as ceded by France to the United States, is made a part of the United States. Its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing with other citizens of the United States in analogous situations. Save only that, as to the portion thereof lying north of the latitude of the mouth of Arcana river, no new state shall be established nor any grants of land made therein other than to Indians in exchange for equivalent portions of lands occupied by them until an amendment of the Constitution shall be made for those purposes.
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> 'Florida also, whensoever it may be rightfully obtained, shall become a part of the United States. Its white inhabitants shall thereupon become citizens, and shall stand, as to their rights and obligations, on the same footing with other citizens of the United States in analogous situations.' Ford's Writings of Jefferson, vol. 8, p. 241.

It is strenuously insisted that Mr. Jefferson's conviction on the subject of the repugnancy of the treaty to the Constitution was [182 U.S. 244, 328] based alone upon the fact that he thought the treaty exceeded the limits of the Constitution, because he deemed that it provided for the admission, according to the Constitution, of the acquired territory as a new state or states into the Union, and hence, for the purpose of conferring this power, he drafted the amendment. The contention is refuted by two considerations: The first, because the two forms of amendment which Mr. Jefferson prepared did not purport to confer any power upon Congress to admit new states; and, second, they absolutely forbade Congress from admitting a new state out of a described part of the territory without a further amendment to the Constitution. It cannot be conceived that Mr. Jefferson would have drafted an amendment to cure a defect which he thought existed, and yet say nothing in the amendment on the subject of such defect. And, moreover, it cannot be conceived that he drafted an amendment to confer a power he supposed to be wanting under the Constitution, and thus ratify the treaty, and yet in the very amendment withhold in express terms, as to a part of the ceded territory, the authority which it was the purpose of the amendment to confer.

I excerpt in the margin13 two letters from Mr. Jefferson, one [182 U.S. 244, 329] written under date of July 7, 1803, to William Dunbar, and the other dated September 7, 1803, to Wilson Cary Nicholas, which show clearly the difficulties which were in the mind of Mr. Jefferson, and which remove all doubt concerning the meaning of the amendment which he wrote and the adoption of which he deemed necessary to cure any supposed want of power concerning the treaty would be provided for.

These letters show that Mr. Jefferson bore in mind the fact that the Constitution in express terms delegated to Congress the power to admit new states, and therefore no further authority on this subject was required. But he thought this power in Congress was confined to the area embraced within the limits of the United States, as existing at the adoption of the Constitution. To fulfil the stipulations of the treaty so as to cause the ceded territory to become a part of the United States, Mr. Jefferson deemed

an amendment to the Constitution to be essential. For this reason the amendment which he formulated declared that the territory ceded was to be 'a part of the United States, and its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing with other citizens of the United States in analogous situations.' What these words meant is not open to doubt when it is observed that they were but the paraphrase of the following words, which were contained in the first proposed amendment which Mr. Jefferson wrote: 'Vesting the inhabitants thereof with all rights possessed by other territorial citizens of the United States,'-which clearly show that it was the want of power to incorporate the ceded country into the United States as a territory which was in Mr. Jefferson's mind, and to accomplish which re- [182 U.S. 244, 330] sult he thought an amendment to the Constitution was required. This provision of the amendment applied to all of the territory ceded, and therefore brought it all into the United States, and hence placed it in a position where the power of Congress to admit new states would have attached to it. As Mr. Jefferson deemed that every requirement of the treaty would be fulfilled by incorporation, and that it would be unwise to form a new state out of the upper part of the new territory, after thus providing for the complete execution of the treaty by incorporation of all the territory into the United States, he inserted a provision forbidding Congress from admitting a new state out of a part of the territory.

With the debates which took place on the subject of the treaty I need not particularly concern myself. Some shared Mr. Jefferson's doubts as to the right of the treaty-making power to incorporate the territory into the United States without an amendment of the Constitution; others deemed that the provision of the treaty was but a promise that Congress would ultimately incorporate as a territory, and, until by the action of Congress this latter result was brought about, full power of legislation to govern as deemed best was vested in Congress. This latter view prevailed. Mr. Jefferson's proposed amendment to the Constitution, therefore, was never adopted by Congress, and hence was never submitted to the people.

An act was approved on October 31, 1803 (2 Stat. at L. 245, chap. 1) 'to enable the President of the United States to take possession of the territories ceded by France to the United States by the treaty concluded at Paris on the 30th of April last, and for the temporary government thereof.' The provisions of this act were absolutely incompatible with the conception that the territory had been incorporated into the United States by virtue of the cession. On November 10, 1803 (2 Stat. at L. 245, chap. 2), an act was passed providing for the issue of stock to raise the funds to pay for the territory. On February 24, 1804 (2 Stat. at L. 251, chap. 13), an act was approved which expressly extended certain revenue and other laws over the ceded country. On March 26, 1804 (2 Stat. at L. 283, chap. 38), an act was passed dividing the 'province of Louisiana' into Orleans territory on the south and the district of Louisiana to [182 U.S. 244, 331] the north. This act extended over the territory of Orleans a large number of the general laws of the United States, and provided a form of government. For the purposes of government the district of Louisiana was attached to the territory of Indiana, which had been carved out of the Northwest Territory. Although the area described as Orleans territory was thus under the authority of a territorial government, and many laws of the United States had been extended by act of Congress to it, it was manifest that Mr. Jefferson thought that the requirement of the treaty that it should be incorporated into the United States had not been complied with.

In a letter written to Mr. Madison on July 14, 1804, Mr. Jefferson, speaking of the treaty of cession, said (Ford's Writings of Jefferson, vol. 8, p. 313):

> 'The inclosed reclamations of Girod & Chote against the claims of Bapstroop to a monopoly of the Indian commerce supposed to be under the protection of the 3d article of the Louisiana convention, as well as some other claims to abusive grants, will probably force us to meet that question. The article has been worded with remarkable caution on the part of our negotiators. It is

> that the inhabitants shall be admitted as soon as possible, according to the principles of our Constitution, to the enjoyment of all the rights of citizens, and, in the meantime, en attendant, shall be maintained in their liberty, property, and religion. That is, that they shall continue under the protection of the treaty until the principles of our Constitution can be extended to them, when the protection of the treaty is to cease, and that of our own principles to take its place. But as this could not be done at once, it has been provided to be as soon as our rules will admit. Accordingly, Congress has begun by extending about twenty particular laws by their titles, to Louisiana. Among these is the act concerning intercourse with the Indians, which establishes a system of commerce with them admitting no monopoly. That class of rights, therefore, are now taken from under the treaty and placed under the principles of our laws. I imagine it will be necessary to express an opinion to Governor Claiborne on this subject, after you shall have made up one.' [182 U.S. 244, 332] In another letter to Mr. Madison, under date of August 15, 1804, Mr. Jefferson said (Ibid. p. 315):
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> 'I am so much impressed with the expediency of putting a termination to the right of France to patronize the rights of Louisiana, which will cease with their complete adoption as citizens of the United States, that I hope to see that take place on the meeting of Congress.'

At the following session of Congress, on March 2, 1805 (2 Stat. at L. 322, chap. 23), an act was approved, which, among other purposes, doubtless was intended to fulfil the hope expressed by Mr. Jefferson in the letter just quoted. That act, in the 1st section, provided that the inhabitants of the territory of Orleans 'shall be entitled to and enjoy all the rights, privileges, and advantages secured by the said ordinance' (that is, the ordinance of 1787) 'and now enjoyed by the people of the Mississippi territory.' As will be remembered, the ordinance of 1787 had been extended to that territory. 1 Stat. at L. 550, chap. 28. Thus, strictly in accord with the thought embodied in the amendments contemplated by Mr. Jefferson, citizenship was conferred, and the territory of Orleans was incorporated into the United States to fulfil the requirements of the treaty, by placing it exactly in the position which it would have occupied had it been within the boundaries of the United States as a territory at the time the Constitution was framed. It is pertinent to recall that the treaty contained stipulations giving certain preferences and commercial privileges for a stated period to the vessels of French and Spanish subjects, and that, even after the action of Congress above stated, this condition of the treaty continued to be enforced, thus demonstrating that even after the incorporation of the territory the express provisions conferring a temporary right which the treaty had stipulated for and which Congress had recognized were not destroyed, the effect being that incorporation as to such matter was for the time being in abeyance.

The upper part of the province of Louisiana, designated by the act of March 26, 1804 (2 Stat. at L. 283, chap. 38), as the district of Louisiana, and by the act of March 3, 1805 (2 Stat. at L. 331, chap. 31), as the territory of Louisiana, was created the territory of Mis- [182 U.S. 244, 333] souri on June 4, 1812. 2 Stat. at L. 743, chap. 95. By this latter act, though the ordinance of 1787 was not in express terms extended over the territory,-probably owing to the slavery agitation,-the inhabitants of the territory were accorded substantially all the rights of the inhabitants of the Northwest Territory. Citizenship was in effect recognized in the 9th section, while the 14th section contained an elaborate declaration of the rights secured to the people of the territory.

Pausing to analyze the practical construction which resulted from the acquisition of the vast domain covered by the Louisiana purchase, it indubitably results, first, that it was conceded by every shade of opinion that the government of the United States had the undoubted right to acquire, hold, and govern the territory as a possession, and that incorporation into the United States could under no circumstances arise solely from a treaty of cession, even although it contained provisions for the accomplishment of

such result; second, it was strenuously denied by many eminent men that, in acquiring territory, citizenship could be conferred upon the inhabitants within the acquired territory; in other words, that the territory could be incorporated into the United States without an amendment to the Constitution; and, third, that the opinion which prevailed was that, although the treaty might stipulate for incorporation and citizenship under the Constitution, such agreements by the treaty-making power were but promises depending for their fulfilment on the furture action of Congress. In accordance with this view the territory acquired by the Louisiana purchase was governed as a mere dependency until, conformably to the suggestion of Mr. Jefferson, it was by the action of Congress incorporated as a territory into the United States, and the same rights were conferred in the same mode by which other territories had previously been incorporated, that is, by bestowing the privileges of citizenship and the rights and immunities which pertained to the Northwest Territory.

Florida was ceded by treaty signed on February 22, 1819. 8 Stat. at L. 252. While drafted in accordance with the precedent afforded by the treaty ceding Louisiana, the Florida treaty was slightly modified in its phraseology, probably to meet the view [182 U.S. 244, 334] that under the Constitution Congress had the right to determine the time when incorporation was to arise. Acting under the precedent afforded by the Louisiana case, Congress adopted a plan of government which was wholly inconsistent with the theory that the territory had been incorporated. General Jackson was appointed governor under this act, and exercised a degree of authority entirely in conflict with the conception that the territory was a part of the United States, in the sense of incorporation, and that those provisions of the Constitution which would have been applicable under that hypothesis were then in force. It will serve no useful purpose to go through the gradations of legislation adopted as to Florida. Suffice it to say that in 1822 (3 Stat. at L. 654, chap. 13), an act was passed as in the case of Missouri, and presumably for the same reason, which, while not referring to the Northwest Territory ordinance, in effect endowed the inhabitants of that territory with the rights granted by such ordinance.

This treaty also, it is to be remarked, contained discriminatory commercial provisions incompatible with the conception of immediate incorporation arising from the treaty, and they were enforced by the executive officers of the government.

The intensity of the political differences which existed at the outbreak of hostilities with Mexico and at the termination of the war with that country, and the subject around which such conflicts of opinion centered, probably explain why the treaty of peace with Mexico departed from the form adopted in the previous treaties concerning Florida and Louisiana. That treaty, instead of expressing a cession in the form previously adopted, whether intentionally or not I am unable, of course, to say, resorted to the expedient suggested by Attorney General Lincoln to President Jefferson, and accomplished the cession by changing the boundaries of the two countries; in other words, by bringing the acquired territory within the described boundaries of the United States. The treaty, besides, contained a stipulation for rights of citizenship; in other words, a provision equivalent in terms to those used in the previous treaties to which I have referred. The controversy which was then flagrant on the subject of slavery prevented the passage of [182 U.S. 244, 335] bill giving California a territorial form of government, and California, after considerable delay, was therefore directly admitted into the Union as a state. After the ratification of the treaty various laws were enacted by Congress, which in effect treated the territory as acquired by the United States; and the executive officers of the government, conceiving that these acts were an implied or express ratification of the provisions of the treaty by Congress, acted upon the assumption that the provisions of the treaty were thus made operative, and hence incorporation had thus become efficacious.

Ascertaining the general rule from the provisions of this latter treaty and the practical execution which it received, it will be seen that the precedents established in the cases of Louisiana and Florida were

departed from to a certain extent; that is, the rule was considered to be that where the treaty, in express terms, brought the territory within the boundaries of the United States and provided for incorporation, and the treaty was expressly or impliedly recognized by Congress, the provisions of the treaty ought to be given immediate effect. But this did not conflict with the general principles of the law of nations which I have at the outset stated, but enforced it, since the action taken assumed, not that incorporation was brought about by the treat-making power wholly without the consent of Congress, but only that, as the treaty provided for incorporation in express terms, and Congress had acted without repudiating it, its provisions should be at once enforced.

Without referring in detail to the acquisition from Russia of Alaska, it suffices to say that that treaty also contained provisions for incorporation, and was acted upon exactly in accord with the practical construction applied in the case of the acquisitions from Mexico, as just stated. However, the treaty ceding Alaska contained an express provision excluding from citizenship the uncivilized native tribes, and it has been nowhere contended that this condition of exclusion was inoperative because of the want of power under the Constitution in the treaty-making authority to so provide, which must be the case if the limitation on the treaty- making power, which is here asserted, be well founded. The treaty concerning Alaska, therefore, adds [182 U.S. 244, 336] cogency to the conception established by every act of the government from the foundation,-that the condition of a treaty, when expressly or impliedly ratified by Congress, becomes the measure by which the rights arising from the treaty are to be adjusted.

The demonstration which it seems to me is afforded by the review which has preceded is, besides, sustained by various other acts of the government which to me are wholly inexplicable except upon the theory that it was admitted that the government of the United States had the power to acquire and hold territory without immediately incorporating it. Take, for instance, the simultaneous acquisition and admission of Texas, which was admitted into the Union as a state by joint resolution of Congress, instead of by treaty. To what grant of power under the Constitution can this action be referred, unless it be admitted that Congress is vested with the right to determine when incorporation arises? It cannot be traced to the authority conferred on Congress to admit new states, for to adopt that theory would be to presuppose that this power gave the prerogative of conferring statehood on wholly foreign territory. But this I have incidentally shown is a mistaken conception. Hence, it must be that the action of Congress at one and the same time fulfilled the function of incorporation; and, this being so, the privilege of statehood was added. But I shall not prolong this opinion by occupying time in referring to the many other acts of the government which further refute the correctness of the propositions which are here insisted on and which I have previously shown to be without merit. In concluding my appreciation of the history of the government, attention is called to the 13th Amendment to the Constitution, which to my mind seems to be conclusive. The 1st section of the amendment, the italics being mine, reads as follows: 'Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.' Obviously this provision recognized that there may be places subject to the jurisdiction of the United States, but which are not [182 U.S. 244, 337] incorporated into it, and hence are not within the United States in the completest sense of those words.

Let me now proceed to show that the decisions of this court, without a single exception, are absolutely in accord with the true rule as evolved from a correct construction of the Constitution as a matter of first impression, and as shown by the history of the government which has been previously epitomized. As it is appropriate here, I repeat the quotation which has heretofore been made from the opinion, delivered by Mr. Chief Justice Marshall, in American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242, where, considering the Florida treaty, the court said (p. 542, L. ed. p. 255):

> 'The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by the treaty the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose.'

In Fleming v. Page the court, speaking through Mr. Chief Justice Taney, discussing the acts of the military forces of the United States while holding possession of Mexican territory, said (9 How. 614, 13 L. ed. 281):

> 'The United States, it is true, may extend its boundaries by conquest or treaty, and may demand the cession of territory as the condition of peace in order to indemnify its citizens for the injuries they have suffered, or to reimburse the government for the expenses of the war. But this can be done only by the treaty-making power or the legislative authority.'

In Cross v. Harrison, 16 How. 164, 14 L. ed. 889, the question for decision, as I have previously observed, was as to the legality of certain duties collected both before and after the ratification of the treaty of peace, on foreign merchandise imported into California. Part of the duties collected were assessed upon importations made by local officials before notice had been received of the ratification of the treaty of peace, and when duties were laid under a tariff which had been promulgated by the President. Other duties were imposed subsequent to the receipt of notification of the ratification, and these latter duties were laid [182 U.S. 244, 338] according to the tariff as provided in the laws of the United States. All the exactions were upheld. The court decided that, prior to and up to the receipt of notice of the ratification of the treaty, the local government lawfully imposed the tariff then in force in California, although it differed from that provided by Congress, and that subsequent to the receipt of notice of the ratification of the treaty the duty prescribed by the act of Congress, which the President had ordered the local officials to enforce, could be lawfully collected. The opinion undoubtedly expressed the thought that by the ratification of the treaty in question, which, as I have shown, not only included the ceded territory within the boundaries of the United States, but also expressly provided for incorporation, the territory had become a part of the United States, and the body of the opinion quoted the letter of the Secretary of the Treasury, which referred to the enactment of laws of Congress by which the treaty had been impliedly ratified. The decision of the court as to duties imposed subsequent to the receipt of notice of the ratification of the treaty of peace undoubtedly took the fact I have just stated into view, and, in addition, was unmistakably proceeded upon the nature of the rights which the treaty conferred. No comment can obscure or do away with the patent fact, namely, that it was unequivocally decided that if different provisions had been found in the treaty a contrary result would have followed. Thus, speaking through Mr. Justice Wayne, the court said (16 How. 197, 14 L. ed. 903):

> 'By the ratification of the treaty California became a part of the United States. And, as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage.'

It is, then, as I think, indubitably settled by the principles of the law of nations, by the nature of the government created under the Constitution, by the express and implied powers conferred upon that government by the Constitution, by the mode in which those powers have been executed from the beginning, and by an unbroken lien of decisions of this court, first announced by Marshall and followed and lucidly expounded [182 U.S. 244, 339] by Taney, that the treaty-making power cannot incorporate territory into the United States without the express or implied assent of Congress, that it may insert in a treaty conditions against immediate incorporation, and that on the other hand, when it has expressed in

the treaty the conditions favorable to incorporation they will, if the treaty be not repudiated by Congress, have the force of the law of the land, and therefore by the fulfilment of such conditions cause incorporation to result. It must follow, therefore, that where a treaty contains no conditions for incorporation, and, above all, where it not only has no such conditions, but expressly provides to the contrary, that incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family.

Does, then, the treaty in question contain a provision for incorporation, or does it, on the contrary, stipulate that incorporation shall not take place from the mere effect of the treaty and until Congress has so determined?-is then the only question remaining for consideration.

The provisions of the treaty with respect to the status of Porto Rico and its inhabitants are as follows:

Article II.

Spain cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam, in the Marianas or Ladrones.

Article IX.

Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce, and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may pre- [182 U.S. 244, 340] serve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

Article X.

The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.

It is to me obvious that the above-quoted provisions of the treaty do not stipulate for incorporation, but, on the contrary, expressly provide that the 'civil rights and political status of the native inhabitants of the territories hereby ceded' shall be determined by Congress. When the rights to which this careful provision refers are put in juxtaposition with those which have been deemed essential from the foundation of the government to bring about incorporation, all of which have been previously referred to, I cannot doubt that the express purpose of the treaty was not only to leave the status of the territory to be determined by Congress, but to prevent the treaty from operating to the contrary. Of course, it is evident that the express or implied acquiescence by Congress in a treaty so framed cannot import that a result was brought about which the treaty itself-giving effect to its provisions-could not produce. And, in addition, the provisions of the act by which the duty here in question was imposed, taken as a whole,

seem to me plainly to manifest the intention of Congress that, for the present at least, Porto Rico is not to be incorporated into the United States.

The fact that the act directs the officers to swear to support the Constitution does not militate against this view, for, as I have conceded, whether the island be incorporated or not, the applicable provisions of the Constitution are there in force. A [182 U.S. 244, 341] further analysis of the provisions of the act seems to me not to be required in view of the fact that as the act was reported from the committee it contained a provision conferring citizenship upon the inhabitants of Porto Rico, and this was stricken out in the Senate. The argument, therefore, can only be that rights were conferred, which, after consideration, it was determined should not be granted. Moreover I fail to see how it is possible, on the one hand, to declare that Congress in passing the act had exceeded its powers by treating Porto Rico as not incorporated into the United States, and, at the same time, it be said that the provisions of the act itself amount to an incorporation of Porto Rico into the United States, although the treaty had not previously done so. It in reason cannot be that the act is void because it seeks to keep the island disincorporated, and, at the same time, that material provisions are not to be enforced because the act does incorporate. Two irreconcilable views of that act cannot be taken at the same time, the consequence being to cause it to be unconstitutional.

In what has preceded I have in effect considered every substantial proposition, and have either conceded or reviewed every authority referred to as establishing that immediate incorporation resulted from the treaty of cession which is under consideration. Indeed, the whole argument in favor of the view that immediate incorporation followed upon the ratification of the treaty in its last analysis necessarily comes to this: Since it has been decided that incorporation flows from a treaty which provides for that result, when its provisions have been expressly or impliedly approved by Congress, it must follow that the same effect flows from a treaty which expressly stipulates to the contrary, even although the condition to that end has been approved by Congress. That is to say, the argument is this: Because a provision for incorporation when ratified incorporates, therefore a provision against incorporation must also produce the very consequence which it expressly provides against.

The result of what has been said is that while in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, [182 U.S. 244, 342] because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. As a necessary consequence, the impost in question assessed on coming from Porto Rico into the United States after the cession was within the power of Congress, and that body was not, moreover, as to such impost, controlled by the clause requiring that imposts should be uniform throughout the United States; in other words, the provision of the Constitution just referred to was not applicable to Congress in legislating for Porto Rico.

Incidentally I have heretofore pointed out that the arguments of expediency pressed with so much earnestness and ability concern the legislative, and not the judicial, department of the government. But it may be observed that, even if the disastrous consequences which are foreshadowed as arising from conceding that the government of the United States may hold property without incorporation were to tempt me to depart from what seems to me to be the plain line of judicial duty, reason admonishes me that so doing would not serve to prevent the grave evils which it is insisted must come, but, on the contrary, would only render them more dangerous. This must be the result, since, as already said, it seems to me it is not open to serious dispute that the military arm of the government of the United States may hold and occupy conquered territory without incorporation for such length of time as may seem appropriate to Congress in the exercise of its discretion. The denial of the right of the civil power to do so would not, therefore, prevent the holding of territory by the United States if it was deemed best

by the political department of the government, but would simply necessitate that it should be exercised by the military instead of by the civil power.

And to me it further seems apparent that another and more disastrous result than that just stated would follow as a consequence of an attempt to cause judicial judgment to invade the domain of legislative discretion. Quite recently one of the stipulations contained in the treaty with Spain which is now under consideration came under review by this court. By the provision in question Spain relinquished 'all claim of sover- [182 U.S. 244, 343] eignty over and title to Cuba.' It was further provided in the treaty as follows:

> 'And as the island is upon the evacuation by Spain to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, and for the protection of life and property.'

It cannot, it is submitted, be questioned that, under this provision of the treaty, as long as the occupation of the United States lasts, the benign sovereignty of the United States extends over and dominates the island of Cuba. Likewise, it is not, it seems to me, questionable that the period when that sovereignty is to cease is to be determined by the legislative department of the government of the United States in the exercise of the great duties imposed upon it, and with the sense of the responsibility which it owes to the people of the United States, and the high respect which it of course feels for all the moral obligations by which the government of the United States may, either expressly or impliedly, be bound. Considering the provisions of this treaty, and reviewing the pledges of this government extraneous to that instrument, by which the sovereignty of Cuba is to be held by the United States for the benefit of the people of Cuba and for their account, to be relinquished to them when the conditions justify its accomplishment, this court uranimously held in Neely v. Henkel, 180 U.S. 109 , ante, 302, 21 Sup. Ct. Rep. 302, that Cuba was not incorporated into the United States, and was a foreign country. It follows from this decision that it is lawful for the United States to take possession of and hold in the exercise of its sovereign power a particular territory, without incorporating it into the United States, if there be obligations of honor and good faith which, although not expressed in the treaty, nevertheless sacredly bind the United States to terminate the dominion and control when, in its political discretion, the situation is ripe to enable it to do so. Conceding, then, for the purpose of the argument, it to be true that it would be a violation of duty under the Constitution for the legislative department, in the exercise of its discretion, to accept a cession of and permanently hold territory which is not [182 U.S. 244, 344] intended to be incorporated, the presumption necessarily must be that that department, which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to its duty under the Constitution, and therefore, when the unfitness of particular territory for incorporation is demonstrated, the occupation will terminate. I cannot conceive how it can be held that pledges made to an alien people can be treated as more sacred than is that great pledge given by every member of every department of the government of the United States to support and defend the Constitution.

But if it can be supposed-which, of course, I do not think to be conceivable-that the judiciary would be authorized to draw to itself by an act of usurpation purely political functions, upon the theory that if such wrong is not committed a greater harm will arise, because the other departments of the government will forget their duty to the Constitution and wantonly transcend its limitations, I am further admonished that any judicial action in this case which would be predicated upon such an unwarranted conception would be absolutely unavailing. It cannot be denied that under the rule clearly settled in Neely v. Henkel, 180 U.S. 109 , ante, 302, 21 Sup. Ct. Rep. 302, the sovereignty of the United States may be extended over foreign territory to remain paramount until, in the discretion of the political

department of the government of the United States, it be relinquished. This method, then, of dealing with foreign territory, would in any event be available. Thus, the enthralling of the treaty-making power, which would result from holding that no territory could be acquired by treaty of cession without immediate incorporation, would only result in compelling a resort to the subterfuge of relinquishment of sovereignty, and thus indirection would take the place of directness of action,-a course which would be incompatible with the dignity and honor of the government.

I am authorized to say that Mr. Justice Shiras and Mr. Justice McKenna concur in this opinion.

Mr. Justice Gray, concurring: [182 U.S. 244, 345] Concurring in the judgment of affirmance in this case, and in substance agreeing with the opinion of Mr. Justice White, I will sum up the reasons for my concurrence in a few propositions which may also indicate my position in other cases now standing for judgment.

The cases now before the court do not touch the authority of the United States over the territories in the strict and technical sense, being those which lie within the United States, as bounded by the Atlantic and Pacific Oceans, the Dominion of Canada and the Republic of Mexico, and the territories of Alaska and Hawaii; but they relate to territory in the broader sense, acquired by the United States by war with a foreign state.

As Chief Justice Marshall said: 'The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty. The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose.' American Ins. Co. v. 356 Bales of Cotton (1828) 1 Pet. 511, 542, 7 L. ed. 242, 255.

The civil government of the United States cannot extend immediately, and of its own force, over territory acquired by war. Such territory must necessarily, in the first instance, be governed by the military power under the control of the President as Commander in Chief. Civil government cannot take effect at once, as soon as possession is acquired under military authority, or even as soon as that possession is confirmed by treaty. It can only be put in operation by the action of the appropriate political department of the government, at such time and in such degree as that department may determine. There must, of necessity, be a transition period.

In a conquered territory, civil government must take effect either by the action of the treaty-making power, or by that of [182 U.S. 244, 346] the Congress of the United States. The office of a treaty of cession ordinarily is to put an end to all authority of the foreign government over the territory, and to subject the territory to the disposition of the government of the United States.

The government and disposition of territory so acquired belong to the government of the United States, consisting of the President, the Senate, elected by the states, and the House of Representatives, chosen by and immediately representing the people of the United States. Treaties by which territory is acquired from a foreign state usually recognize this.

It is clearly recognized in the recent treaty with Spain, especially in the 9th article, by which 'the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.'

By the 4th and 13th articles of the treaty, the United States agree that for ten years Spanish ships and merchandise shall be admitted to the ports of the Philippine islands on the same terms as ships and merchandise of the United States, and Spanish scientific, literary, and artistic works not subversive of public order shall continue to be admitted free of duty into all the ceded territories. Neither of these provisions could be carried out if the Constitution required the customs regulations of the United States to apply in those territories.

In the absence of congressional legislation, the regulation of the revenue of the conquered territory, even after the treaty of cession, remains with the executive and military authority.

So long as Congress has not incorporated the territory into the United States, neither military occupation nor cession by treaty makes the conquered territory domestic territory, in the sense of the revenue laws; but those laws concerning 'foreign countries' remain applicable to the conquered territory until changed by Congress. Such was the unanimous opinion of this court, as declared by Chief Justice Taney in Fleming v. Page, 9 How. 603, 617, 13 L. ed. 276, 281.

If Congress is not ready to construct a complete government for the conquered territory, it may establish a temporary government, which is not subject to all the restrictions of the Constitution. [182 U.S. 244, 347] Such was the effect of the act of Congress of April 12, 1900 (31 Stat. at L. chap. 191), entitled 'An Act Temporarily to Provide Revenues and a Civil Government for Porto Rico, and for Other Purposes.' By the 3d section of that act, it was expressly declared that the duties thereby established on merchandise and articles going into Porto Rico from the United States, or coming into the United States from Porto Rico, should cease in any event on March 1, 1902, and sooner if the legislative assembly of Porto Rico should enact and put into operation a system of local taxation to meet the necessities of the government established by that act.

The system of duties temporarily established by that act during the transition period was within the authority of Congress under the Constitution of the United States.

Mr. Chief Justice Fuller, with whom concurred Mr. Justice Harlan, Mr. Justice Brewer, and Mr. Justice Peckham, dissenting:

This is an action brought to recover moneys exacted by the collector of customs at the port of New York as import duties on two shipments of fruit from ports in the island of Porto Rico to the port of New York in November, 1900

The treaty ceding Porto Rico to the United States was ratified by the Senate February 6, 1899; Congress passed an act to carry out its obligations March 3, 1899; and the ratifications were exchanged, and the treaty proclaimed April 11, 1899. Then followed the act approved April 12, 1900. 31 Stat. at L. 77, chap. 191.

Mr. Justice Harlan, Mr. Justice Brewer, Mr. Justice Peckham, and myself are unable to concur in the opinions and judgment of the court in this case. The majority widely differ in the reasoning by which the conclusion is reached, although there seems to be concurrence in the view that Porto Rico belongs to the United States, but nevertheless, and notwithstanding the act of Congress, is not a part of the United States subject to the provisions of the Constitution in respect of the levy of taxes, duties, imposts, and excises. [182 U.S. 244, 348] The inquiry is whether the act of April 12, 1900, so far as it requires the payment of import duties on merchandise brought from a port of Porto Rico as a condition of entry into other ports of the United States, is consistent with the Federal Constitution.

The act creates a civil government for Porto Rico, with a governor, secretary, attorney general, and other officers, appointed by the President, by and with the advice and consent of the Senate, who, together with five other persons, likewise so appointed and confirmed, are constituted an executive council; local legislative powers are vested in a legislative assembly consisting of the executive council and a house of delegates to be elected; courts are provided for, and, among other things, Porto Rico is constituted a judicial district, with a district judge, attorney, and marshal, to be appointed by the President for the term of four years. The district court is to be called the district court of the United States for Porto Rico, and to possess, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States. The act also provides that 'writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied.'

It was also provided that the inhabitants continuing to reside in Porto Rico, who were Spanish subjects on April 11, 1899, and their children born subsequent thereto (except such as should elect to preserve their allegiance to the Crown of Spain), together with citizens of the United States residing in Porto Rico, should 'constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such.' [182 U.S. 244, 349] All officials authorized by the act are required to, 'before entering upon the duties of their respective offices, take an oath to support the Constitution of the United States and the laws of Porto Rico.'

The 2d, 3d, 4th, 5th and 38th sections of the act are printed in the margin. 14 [182 U.S. 244, 350] It will be seen that duties are imposed upon 'merchandise coming into Porto Rico from the United States:' 'merchandise [182 U.S. 244, 351] coming into the United States from Porto Rico;' taxes upon 'articles of merchandise of Porto Rican manufacture coming into the United States and withdrawn from consumption or sale' 'equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture;' and 'on all articles of merchandise of United States manufacture coming into Porto Rico,' 'a tax equal in rate and amount to the internal-revenue tax imposed in Porto Rico upon the like articles of Porto Rican manufacture.'

And it is also provided that all duties collected in Porto Rico on imports from foreign countries and on 'merchandise coming into Porto Rico from the United States,' and 'the gross amount of all collections of duties and taxes in the United States upon articles of merchandise coming from Porto Rico,' shall be held as a separate fund and placed 'at the disposal of the President to be used for the government and benefit of Porto Rico' until the local government is organized, when 'all collections of taxes and duties under this act shall be paid into the treasury of Porto Rico, instead of being paid into the Treasury of the United States.'

The 1st clause of 8 of article 1 of the Constitution [182 U.S. 244, 352] provides: 'The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.'

Clauses 4, 5, and 6 of 9 are:

> 'No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

> 'No tax or duty shall be laid on articles exported from any state.
>
> 'No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.'

This act on its face does not comply with the rule of uniformity, and that fact is admitted.

The uniformity required by the Constitution is a geographical uniformity, and is only attained when the tax operates with the same force and effect in every place where the subject of it is found. Knowlton v. Moore, 178 U.S. 41 , 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Head Money Cases, 112 U.S. 594 , sub nom. Edye v. Robertson, 28 L. ed. 802, 5 Sup. Ct. Rep. 247. But it is said that Congress in attempting to levy these duties was not exercising power derived from the 1st clause of 8, or restricted by it, because in dealing with the territories Congress exercises unlimited powers of government, and, moreover, that these duties are merely local taxes.

This court, in 1820, when Marshall was Chief Justice, and Washington, William Johnson, Livingston, Todd, Duvall, and Story were his associates, took a different view of the power of Congress in the matter of laying and collecting taxes, duties, imposts, and excises in the territories, and its ruling in Loughborough v. Blake, 5 Wheat. 317, 5 L. ed. 98, has never been overruled.

It is said in one of the opinions of the majority that the Chief Justice 'made certain observations which have occasioned some embarrassment in other cases.' Manifestly this is so in this case, for it is necessary to overrule that decision in order to reach the result herein announced. [182 U.S. 244, 353] The question in Loughborough v. Blake was whether Congress had the right to impose a direct tax on the District of Columbia apart from the grant of exclusive legislation, which carried the power to levy local taxes. The court held that Congress had such power under the clause in question. The reasoning of Chief Justice Marshall was directed to show that the grant of the power 'to lay and collect taxes, duties, imposts, and excises,' because it was general and without limitation as to place, consequently extended 'to all places over which the government extends,' and he declared that, if this could be doubted, the doubt was removed by the subsequent words, which modified the grant, 'but all duties, imposts, and excises shall be uniform throughout the United States.' He then said: 'It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power, then, to lay and collect duties, imposts, and excises may be exercised, and must be exercised, throughout the United States. Does this term designate the whole, or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which is composed of states and territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of imposts, duties, and excises should be observed in the one than in the other. Since, then, the power to lay and collect taxes, which includes direct taxes, is obviously coextensive with the power to lay and collect duties, imposts, and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States.'

It is wholly inadmissible to reject the process of reasoning by which the Chief Justice reached and tested the soundness of his conclusion, as merely obiter.

Nor is there any intimation that the ruling turned on the theory that the Constitution irrevocably adhered to the soil of Maryland and Virginia, and therefore accompanied the parts which were ceded to form the District, or that 'the tie' be- [182 U.S. 244, 354] tween those states and the Constitution 'could not be

dissolved without at least the consent of the Federal and state governments to a formal separation,' and that this was not given by the cession and its acceptance in accordance with the constitutional provision itself, and hence that Congress was restricted in the exercise of its powers in the District, while not so in the territories.

So far from that, the Chief Justice held the territories as well as the District to be part of the United States for the purposes of national taxation, and repeated in effect what he had already said in M'Culloch v. Maryland, 4 Wheat. 408, 4 L. ed. 602; 'Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported.'

Conceding that the power to tax for the purposes of territorial government is implied from the power to govern territory, whether the latter power is attributed to the power to acquire or the power to make needful rules and regulations, these particular duties are nevertheless not local in their nature, but are imposed as in the exercise of national powers. The levy is clearly a regulation of commerce, and a regulation affecting the states and their people as well as this territory and its people. The power of Congress to act directly on the rights and interests of the people of the states can only exist if and as granted by the Constitution. And by the Constitution Congress is vested with power 'to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.' The territories are indeed not mentioned by name, and yet commerce between the territories and foreign nations is covered by the clause, which would seem to have been intended to embrace the entire internal as well as foreign commerce of the country.

It is evident that Congress cannot regulate commerce between a territory and the states and other territories in the exercise of the bare power to govern the particular territory, and as this act was framed to operate and does operate on the people of the states, the power to so legislate is apparently [182 U.S. 244, 355] rested on the assumption that the right to regulate commerce between the states and territories comes within the commerce clause by necessary implication. Stoutenburgh v. Hennick, 129 U.S. 141 , 32 L. ed. 637, 9 Sup. Ct. Rep. 256.

Accordingly the act of Congress of August 8, 1890, entitled 'An Act to Limit the Effect of the Regulations of Commerce between the Several States, and with Foreign Countries in Certain Cases,' applied in terms to the territories as well as to the states. [26 Stat. at L. 313, chap. 728.]

In any point of view, the imposition of duties on commerce operates to regulate commerce, and is not a matter of local legislation; and it follows that the levy of these duties was in the exercise of the national power to do so, and subject to the requirement of geographical uniformity.

The fact that the proceeds are devoted by the act to the use of the territory does not make national taxes, local. Nobody disputes the source of the power to lay and collect, duties geographically uniform, and apply the proceeds by a proper appropriation act to the relief of a particular territory, but the destination of the proceeds would not change the source of the power to lay and collect. And that suggestion certainly is not strengthened when based on the diversion of duties collected from all parts of the United States to a territorial treasury before reaching the Treasury of the United States. Clause 7 of 9 of article 1 provides that 'no money shall be drawn from the Treasury, but in consequence of appropriations made by law,' and the proposition that this may be rendered inapplicable if the money is not permitted to be paid in so as to be susceptible of being drawn out is somewhat startling.

It is also urged that Chief Justice Marshall was entirely in fault because, while the grant was general and without limitation as to place, the words, 'throughout the United States,' imposed a limitation as to place

so far as the rule of uniformity was concerned, namely, a limitation to the states as such.

Undoubtedly the view of the Chief Justice was utterly inconsistent with that contention, and, in addition to what has been quoted, he further remarked: 'If it be said that the principle of uniformity, estab lished in the Constitution, secures the District from oppression in the imposition of indirect taxes, it is [182 U.S. 244, 356] not less true that the principle of apportionment, also established in the Constitution, secures the District from any oppressive exercise of the power to lay and collect direct taxes.' [5 Wheat. 325, 5 L. ed. 100.] It must be borne in mind that the grant was of the absolute power of taxation for national purposes, wholly unlimited as to place, and subject to only one exception and two qualifications. The exception was that exports could not be taxed at all. The qualifications were that direct taxes must be imposed by the rule of apportionment, and indirect taxes by the rule of uniformity. License Tax Cases, 5 Wall. 462, 18 L. ed. 497. But as the power necessarily could be exercised throughout every part of the national domain, state, territory, District, the exception and the qualifications attended its exercise. That is to say, the protection extended to the people of the states extended also to the people of the District and the territories.

In Knowlton v. Moore, 178 U.S. 41 , 44 L. ed. 969, 20 Sup. Ct. Rep. 747, it is shown that the words, 'throughout the United States,' are but a qualification introduced for the purpose of rendering the uniformity prescribed, geographical, and not intrinsic, as would have resulted if they had not been used.

As the grant of the power to lay taxes and duties was unqualified as to place, and the words were added for the sole purpose of preventing the uniformity required from being intrinsic, the intention thereby to circumscribe the area within which the power could operate not only cannot be imputed, but the contrary presumption must prevail.

Taking the words in their natural meaning,-in the sense in which they are frequently and commonly used,-no reason is perceived for disagreeing with the Chief Justice in the view that they were used in this clause to designate the geographical unity known as 'The United States,' 'our great republic, which is composed of states and territories.'

Other parts of the Constitution furnish illustrations of the correctness of this view. Thus, the Constitution vests Congress with the power 'to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcy throughout the United States.' [182 U.S. 244, 357] This applies to the territories as well as the states, and has always been recognized in legislation as binding.

Aliens in the territories are made citizens of the United States, and bankrupts residing in the territories are discharged from debts owing citizens of the states, pursuant to uniform rules and laws enacted by Congress in the exercise of this power.

The 14th Amendment provides that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside;' and this court naturally held, in the Slaughter-House Cases, 16 Wall. 36, 21 L. ed. 394, that the United States included the District and the territories. Mr. Justice Miller observed: 'It had been said by eminent judges that no man was a citizen of the United States, except as he was a citizen of one of the states composing the Union. Those, therefore, who had been born and resided always in the District of Columbia or in the territories, though within the United States, were not citizens. Whether this proposition was sound or not had never been judicially decided.' And he said the question was put at rest by the amendment, and the distinction between citizenship of the United States and citizenship of a state was clearly recognized and established. 'Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the

state to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.'

No person is eligible to the office of President unless he has 'attained the age of thirty-five years, and been fourteen years a resident within the United States.' Clause 5, 1, art. 2.

Would a native-born citizen of Massachusetts be ineligible if he had taken up his residence and resided in one of the territories for so many years that he had not resided altogether fourteen years in the states? When voted for he must be a citizen of one of the states (clause 3, 1, art. 2; art. 12), but as to length of time must residence in the territories be counted against him? [182 U.S. 244, 358] The 15th Amendment declares that 'the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.' Where does that prohibition on the United States especially apply if not in the territories?

The 13th Amendment says that neither slavery nor involuntary servitude 'shall exist within the United States or any place subject to their jurisdiction.' Clearly this prohibition would have operated in the territories if the concluding words had not been added. The history of the times shows that the addition was made in view of the then condition of the country,-the amendment passed the house January 31, 1865,-and it is, moreover, otherwise applicable than to the territories. Besides, generally speaking, when words are used simply out of abundant caution, the fact carries little weight.

Other illustrations might be adduced, but it is unnecessary to prolong this opinion by giving them.

I repeat that no satisfactory ground has been suggested for restricting the words 'throughout the United States,' as qualifying the power to impose duties, to the states, and that conclusion is the more to be avoided when we reflect that it rests, in the last analysis, on the assertion of the possession by Congress of unlimited power over the territories.

The government of the United States is the government ordained by the Constitution, and possesses the powers conferred by the Constitution. 'This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments. The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?' Marbury v. Madison, 1 Cranch, 176, 2 L. ed. 73. The opinion of the court, by Chief Justice Marshall, in that case, was delivered at [182 U.S. 244, 359] the February term, 1803, and at the October term, 1885, the court, in Yick Wo v. Hopkins, 118 U.S. 356 , 30 L. ed. 220, 6 Sup. Ct. Rep. 1064, speaking through Mr. Justice Matthews, said: 'When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power.'

From Marbury v. Madison to the present day, no utterance of this court has intimated a doubt that in its operation on the people, by whom and for whom it was established, the national government is a government of enumerated powers, the exercise of which is restricted to the use of means appropriate and plainly adapted to constitutional ends, and which are 'not prohibited, but consist with the letter and

spirit of the Constitution.'

The powers delegated by the people to their agents are not enlarged by the expansion of the domain within which they are exercised. When the restriction on the exercise of a particular power by a particular agent is ascertained, that is an end of the question.

To hold otherwise is to overthrow the basis of our constitutional law, and moreover, in effect, to reassert the proposition that the states, and not the people, created the government.

It is again to antagonize Chief Justice Marshall, when he said: 'The government of the Union, then (whatever may be the influence of this fact on the case), is emphatically and truly a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them and for their benefit. This government is acknowledged by all to be one of enumerated powers.' 4 Wheat. 404, 4 L. ed. 601.

The prohibitory clauses of the Constitution are many, and [182 U.S. 244, 360] they have been repeatedly given effect by this court in respect of the territories and the District of Columbia.

The underlying principle is indicated by Chief Justice Taney, in The Passenger Cases, 7 How. 492, 12 L. ed. 790, where he maintained the right of the American citizen to free transit in these words: 'Living, as we do, under a common government charged with the great concerns of the whole Union, every citizen of the United States, from the most remote states or territories, is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every state and territory of the Union. . . . For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own states.'

In Cross v. Harrison, 16 How. 197, 14 L. ed. 903, it was held that by the ratification of the treaty with Mexico 'California became a part of the United States,' and that 'the right claimed to land foreign goods within the United States at any place out of a collection district, if allowed, would be a violation of that provision in the Constitution which enjoins that all duties, imposts, and excises shall be uniform throughout the United States.'

In Dred Scott v. Sandford, 19 How. 393, 15 L. ed. 691, the court was unanimous in holding that the power to legislate respecting a territory was limited by the restrictions of the Constitution, or, as Mr. Justice Curtis put it, by 'the express prohibitions on Congress not to do certain things.'

Mr. Justice McLean said: 'No powers can be exercised which are prohibited by the Constitution, or which are contrary to its spirit.'

Mr. Justice Campbell: 'I look in vain, among the discussions of the time, for the assertion of a supreme sovereignty for Congress over the territory then belonging to the United States, or that they might thereafter acquire. I seek in vain for an annunciation that a consolidated power had been inaugurated, [182 U.S. 244, 361] whose subject comprehended an empire, and which had no restriction but the discretion of Congress.'

Chief Justice Taney: 'The powers over person and property of which we speak are not only not granted to Congress, but are in express terms denied, and they are forbidden to exercise them. And this prohibition is not confined to the states, but the words are general, and extend to the whole territory

over which the Constitution gives it power to legislate, including those portions of it remaining under territorial government, as well as that covered by states. It is a total absence of power everywhere within the dominion of the United States, and places the citizens of a territory, so far as these rights are concerned, on the same footing with citizens of the states, and guards them as firmly and plainly against any inroads which the general government might attempt under the plea of implied or incidental powers.'

Many of the later cases were brought from territories over which Congress had professed to 'extend the Constitution,' or from the District after similar provision, but the decisions did not rest upon the view that the restrictions on Congress were self-imposed, and might be withdrawn at the pleasure of that body.

Capital Traction Co. v. Hof, 174 U.S. 1 , 43 L. ed. 873, 19 Sup. Ct. Rep. 580, is a fair illustration, for it was there ruled, citing Webster v. Reid, 11 How. 437, 13 L. ed. 761; Callan v. Wilson, 127 U.S. 550 , 32 L. ed. 226, 8 Sup. Ct. Rep. 1301; Thompson v. Utah, 170 U.S. 343 , 42 L. ed. 1061, 18 Sup. Ct. Rep. 620, that 'it is beyond doubt, at the present day, that the provisions of the Constitution of the United States securing the right of trial by jury, whether in civil or in criminal cases, are applicable to the District of Columbia.'

No reference whatever was made to 34 of the act of February 21, 1871 (16 Stat. at L. 419, chap. 62), which, in providing for the election of a delegate for the District, closed with the words: 'The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly; and the Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said District of Columbia as elsewhere within the United States.' [182 U.S. 244, 362] Nor did the court in Bauman v. Ross, 167 U.S. 548 , 42 L. ed. 270, 17 Sup. Ct. Rep. 966, attribute the application of the 5th Amendment to the act of Congress, a although it was cited to another point.

The truth is that, as Judge Edmunds wrote, 'the instances in which Congress has declared, in statutes organizing territories, that the Constitution and laws should be in force there, are no evidence that they were not already there, for Congress and all legislative bodies have often made enactments that in effect merely declared existing law. In such cases they declare a pre-existing truth to ease the doubts of casuists.' Cong. Rec. 56th Cong. 1st Sess., p. 3507.

In Callan v. Wilson, 127 U.S. 540 , 32 L. ed. 223, 8 Sup. Ct. Rep. 1301, which was a criminal prosecution in the District of Columbia, Mr. Justice Harlan, speaking for the court, said: 'There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of this District may be lawfully deprived of the benefit of any of the constitutional guaranties of life, liberty, and property,-especially of the privilege of trial by jury in criminal cases.' And further: 'We cannot think that the people of this District have, in that regard, less rights than those accorded to the people of the territories of the United States.'

In Thompson v. Utah, 170 U.S. 343 , 42 L. ed. 1061, 18 Sup. Ct. Rep. 620, it was held that a statute of the state of Utah providing for the trial of criminal cases other than capital, by a jury of eight, was invalid as applied on a trial for a crime committed before Utah was admitted; that it was not 'competent for the state of Utah, upon its admission into the Union, to do in respect of Thompson's crime what the United States could not have done while Utah was a territory;' and that an act of Congress providing for a trial by a jury of eight persons in the territory of Utah would have been in conflict with the Constitution.

Article 6 of the Constitution ordains: 'This Constitution, and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.'

And, as Mr. Justice Curtis observed in United States v. Morris, [182 U.S. 244, 363] 1 Curt. C. C. 50, Fed. Cas. No. 15,815, 'nothing can be clearer than the intention to have the Constitution, laws, and treaties of the United States in equal force throughout every part of the terribory of the United States, alike in all places, at all times.'

But it is said that an opposite result will be reached if the opinion of Chief Justice Marshall in American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed 242, be read 'in connection with art. 3, 1 and 2 of the Constitution, vesting 'the judicial power of the United States' in 'one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior,'' etc. And it is argued: 'As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution, and upon territory which is not part of the United States within the meaning of the Constitution.'

And further, that if the territories 'be a part of the United States, it is difficult to see how Congress could create courts in such territories, except under the judicial clause of the Constitution.'

By the 9th clause of 8 of article 1, Congress is vested with power 'to constitute tribunals inferior to the Supreme Court,' while by 1 of article 3 the power is granted to it to establish inferior courts in which the judicial power of the government treated of in that article is vested.

That power was to be exerted over the controversies therein named, and did not relate to the general administration of justice in the territories, which was committed to courts established as part of the territorial government.

What the Chief Justice said was: 'These courts, then, are not constitutional courts, in which the judicial power conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that [182 U.S. 244, 364] clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States. The jurisdiction with which they are invested is not a part of that judicial power which is defined in the 3d article of the Constitution, but is conferred by Congress in the execution of those general powers which that body possesses over the territories of the United States.'

The Chief Justice was dealing with the subject in view of the nature of the judicial department of the government and the distinction between Federal and state jurisdiction, and the conclusion was, to use the language of Mr. Justice Harlan in McAllister v. United States, 141 U.S. 174 , 35 L. ed. 693, 11 Sup. Ct. Rep. 949, 'that courts in the territories, created under the plenary municipal authority that Congress possesses over the territories of the United States, are not courts of the United States created under the authority conferred by that article.'

But it did not therefore follow that the territories were not parts of the United States, and that the power of Congress in general over them was unlimited; nor was there in any of the discussions on this subject the least intimation to that effect.

And this may justly be said of expressions in some other cases supposed to give color to this doctrine of absolute dominion in dealing with civil rights.

In Murphy v. Ramsey, 114 U.S. 15 , 29 L. ed. 47, 5 Sup. Ct. Rep. 747, Mr. Justice Matthews said: 'The personal and civil rights of the inhabitants of the territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, state and national. Their political rights are franchises, which they hold as privileges in the legislative discretion of the Congress of the United States.'

In the Church of Jesus Christ of L. D. S. v. United States, 136 U.S. 44 , 34 L. ed. 491, 10 Sup. Ct. Rep. 803, Mr. Justice Bradley observed: 'Doubtless Congress, in legislating for the territories, would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments; but these limitations would exist rather by inference and the general spirit of the Constitution, from which Congress derives all its powers, than by any express and direct application of its provisions. [182 U.S. 244, 365] That able judge was referring to the fact that the Constitution does not expressly declare that its prohibitions operate on the power to govern the territories, but, because of the implication that an express provision to that effect might be essential, three members of the court were constrained to dissent, regarding it, as was said, 'of vital consequence that absolute power should never be conceded as belonging under our system of government to any one of its departments.'

What was ruled in Murphy v. Ramsey is that in places over which Congress has exclusive local jurisdiction its power over the political status is plenary.

Much discussion was had at the bar in respect of the citizenship of the inhabitants of Porto Rico, but we are not required to consider that subject at large in these cases. It will be time enough to seek a ford when, if ever, we are brought to the stream.

Yet although we are confined to the question of the validity of certain duties imposed after the organization of Porto Rico as a territory of the United States, a few observations and some references to adjudged cases may well enough be added in view of the line of argument pursued in the concurring opinion.

In American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 541,- in which, by the way, the court did not accept the views of Mr. Justice Johnson in the circuit court or of Mr. Webster in argument,-Chief Justice Marshall said: 'The course which the argument has taken will require that in deciding this question the court should take into view the relation in which Florida stands to the United States. The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently that government possesses the power of acquiring territory, either by conquest or by treaty. The usage of the world is, if a nation be not entriely subdued, to consider the holding of conquered territory as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or on such as its new master shall impose. [182 U.S. 244, 366] On such transfer of territory, it has never been held that the relations of the inhabitants with each other undergo any change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the state. On the 2d of February, 1819, Spain ceded Florida to the United States.

The 6th article of the treaty of cession contains the following provision: 'The inhabitants of the territories which his Catholic Majesty cedes to the United States by this treaty shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of the privileges, rights, and immunities of the citizens of the United States.' This treaty is the law of the land, and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States. It is unnecessary to inquire whether this is not their condition independent of stipulation. They do not, however, participate in political power; they do not share in the government till Florida shall become a state. In the meantime, Florida continues to be a territory of the United States; governed by virtue of that clause in the Constitution which empowers Congress 'to make all needful rules and regulations respecting the territory or other property belonging to the United States.' Perhaps the power of governing a territory belonging to the United States, which has not, by becoming a state, acquired the means of self-government, may result necessarily from the facts that it is not within the jurisdiction of any particular state, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned.' [182 U.S. 244, 367] General Halleck (International Law, 1st ed. chap. 33, 14), after quoting from Chief Justice Marshall, observed:

> 'This is now a well-settled rule of the law of nations, and is universally admitted. Its provisions are clear and simple and easily understood; but it is not so easy to distinguish between what are political and what are municipal laws, and to determine when and how far the constitution and laws of the conqueror change or replace those of the conquered. And in case the government of the new state is a constitutional government, of limited and divided powers, questions necessarily arise respecting the authority, which, in the absence of legislative action, can be exercised in the conquered territory after the cessation of war and the conclusion of a treaty of peace. The determination of these questions depends upon the institutions and laws of the new sovereign, which, though conformable to the general rule of the law of nations, affect the construction and application of that rule to particular cases.'

In United States v. Percheman, 7 Pet. 87, 8 L. ed. 617, the Chief Justice said:

> 'The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? . . . The cession of a territory by its name from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property.'

Again, the court in Pollard v. Hagan, 3 How. 225, 11 L. ed. 572:

> 'Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.'

And in Chicago, R. I. & P. R. Co. v. McGlinn, 114 U.S. 546 , 29 L. ed. 271, 5 Sup. Ct. Rep. 1006: 'It is a general rule of public law, recognized and acted upon by the United States, that whenever [182 U.S. 244, 368] political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new government or sovereign. By the cession, public property passes from one government to the other, but private

property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction and legislative power-and the latter is involved in the former-to the United States, the laws of the country in support of an established religion, or abridging the freedom of the press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use, and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general that a change of government leaves them in force until, by direct action of the new government, they are altered or repealed.'

When a cession of territory to the United States is completed by the ratification of a treaty, it was stated in Cross v. Harrison, 16 How. 198, 14 L. ed. 903, that the land ceded becomes a part of the United States, and that, as soon as it becomes so, the territory is subject to the acts which were in force to regulate foreign commerce with the United States, after those had ceased which had been instituted for its regulation as a belligerent right; and the latter ceased after the ratification of the treaty. This statement was made by the justice delivering the opinion, as the result of the discussion and argument which he had already set forth. It was his summing up of what he supposed was decided on that subject in the case in which he was writing. [182 U.S. 244, 369] The new master was, in the instance of Porto Rico, the United States, a constitutional government with limited powers, and the terms which the Constitution itself imposed, or which might be imposed in accordance with the Constitution, were the terms on which the new master took possession.

The power of the United States to acquire territory by conquest, by treaty, or by discovery and occupation, is not disputed, nor is the proposition that in all international relations, interests, and responsibilities the United States is a separate, independent, and sovereign nation; but it does not derive its powers from international law, which, though a part of our municipal law, is not a part of the organic law of the land. The source of national power in this country is the Constitution of the United States; and the government, as to our internal affairs, possesses no inherent sovereign power not derived from that instrument, and inconsistent with its letter and spirit.

Doubtless the subjects of the former sovereign are brought by the transfer under the protection of the acquiring power, and are so far forth impressed with its nationality, but it does not follow that they necessarily acquire the full status of citizens. The 9th article of the treaty ceding Porto Rico to the United States provided that Spanish subjects, natives of the Peninsula, residing in the ceded territory, might remain or remove, and in case they remained might preserve their allegiance to the Crown of Spain by making a declaration of their decision to do so, 'in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they reside.'

The same article also contained this paragraph: 'The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.' This was nothing more than a declaration of the accepted principles of international law applicable to the status of the Spanish subjects and of the native inhabitants. It did not assume that Congress could deprive the inhabitants of ceded territory of rights to which they might be entitled. The grant by Spain could not enlarge the powers of Congress, nor did it [182 U.S. 244, 370] purport to secure from the United States a guaranty of civil or political privileges.

Indeed, a treaty which undertook to take away what the Constitution secured, or to enlarge the Federal

jurisdiction, would be simply void.

> 'It need hardly be said that a treaty cannot change the Constitution, or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our government.' The Cherokee Tobacco, 11 Wall. 620, sub nom. 207 Half Pound Papers of Smoking Tobacco v. United States, 20 L. ed. 229.

So, Mr. Justice Field in De Geofroy v. Riggs, 133 U.S. 267 , 33 L. ed. 645, 10 Sup. Ct. Rep. 297: 'The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the states. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the states, or a cession of any portion of the territory of the latter, without its consent.'

And it certainly cannot be admitted that the power of Congress to lay and collect taxes and duties can be curtailed by an arrangement made with a foreign nation by the President and two thirds of a quorum of the Senate. See 2 Tucker, Const. 354, 355, 356.

In the language of Judge Cooley: 'The Constitution itself never yields to treaty or enactment; it neither changes with time nor does it in theory bend to the force of circumstances. It may be amended according to its own permission; but while it stands it is 'a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances.' Its principles cannot, therefore, be set aside in order to meet the supposed necessities of great crises. 'No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

I am not intimating in the least degree that any reason exists for regarding this article to be unconstitutional, but even if it [182 U.S. 244, 371] were, the fact of the cession is a fact accomplished, and this court is concerned only with the question of the power of the government in laying duties in respect of commerce with the territory so ceded.

In the concurring opinion of Mr. Justice White, we find certain important propositions conceded, some of which are denied or not admitted in the other. These are to the effect that 'when an act of any department is challenged because not warranted by the Constitution, the existence of the authority is to be ascertained by determining whether the power has been conferred by the Constitution, either in express terms or by lawful implication;' that, as every function of the government is derived from the Constitution, 'that instrument is everywhere and at all times potential in so far as its provisions are applicable;' that 'wherever a power is given by the Constitution, and there is a limitation imposed on the authority, such restriction operates upon and confines every action on the subject within its constitutional limits;' that where conditions are brought about to which any particular provision of the Constitution applies, its controlling influence cannot be frustrated by the action of any or all of the departments of the government; that the Constitution has conferred on Congress the right to create such municipal organizations as it may deem best for all the territories of the United States, but every applicable express limitation of the Constitution is in force, and even where there is no express command which applies, there may nevertheless be restrictions of so fundamental a nature that they cannot be transgressed though not expressed in so many words; that every provision of the Constitution which is applicable to the territories is controlling therein, and all the limitations of the Constitution applicable to Congress in governing the territories necessarily limit its power; that in the case of the territories, when a provision of the Constitution is invoked, the question is whether the provision relied

on is applicable; and that the power to lay and collect taxes, duties, imposts, and excises, as well as the qualification of uniformity, restrains Congress from imposing an impost duty on goods coming into the United States from a territory [182 U.S. 244, 372] which has been incorporated into and forms a part of the United States.

And it is said that the determination of whether a particular provision is applicable involves an inquiry into the situation of the territory and its relations to the United States, although it does not follow, when the Constitution has withheld all power over a given subject, that such an inquiry is necessary.

The inquiry is stated to be: 'Had Porto Rico, at the time of the passage of the act in question, been incorporated into and become an integral part of the United States?' And the answer being given that it had not, it is held that the rule of uniformity was not applicable.

I submit that that is not the question in this case. The question is whether, when Congress has created a civil government for Porto Rico, has constituted its inhabitants a body politic, has given it a governor and other officers, a legislative assembly, and courts, with right of appeal to this court, Congress can, in the same act and in the exercise of the power conferred by the 1st clause of 8, impose duties on the commerce between Porto Rico and the states and other territories in contravention of the rule of uniformity qualifying the power. If this can be done, it is because the power of Congress over commerce between the states and any of the territories is not restricted by the Constitution. This was the position taken by the Attorney General, with a candor and ability that did him great credit.

But that position is rejected, and the contention seems to be that, if an organized and settled province of another sovereignty is acquired by the United States, Congress has the power to keep it, like a disembodied shade, in an intermediate state of ambiguous existence for an indefinite period; and, more than that, that after it has been called from that limbo, commerce with it is absolutely subject to the will of Congress, irrespective of constitutional provisions.

The accuracy of this view is supposed to be sustained by the act of 1856 in relation to the protection of citizens of the United States removing guano from unoccupied islands; but I am unable to see why the discharge by the United States of its un- [182 U.S. 244, 373] doubted duty to protect its citizens on terra nullius, whether temporarily engaged in catching and curing fish, or working mines, or taking away manure, furnishes support to the proposition that the power of Congress over the territories of the United States is unrestricted.

Great stress is thrown upon the word 'incorporation,' as if possessed of some occult meaning, but I take it that the act under consideration made Porto Rico, whatever its situation before, an organized territory of the United States. Being such, and the act undertaking to impose duties by virtue of clause 1 of 8, how is it that the rule which qualifies the power does not apply to its exercise in respect of commerce with that territory? The power can only be exercised as prescribed, and even if the rule of uniformity could be treated as a mere regulation of the granted power,-a suggestion to which I do not assent,-the validity of these duties comes up directly, and it is idle to discuss the distinction between a total want of power and a defective exercise of it.

The concurring opinion recognizes the fact that Congress, in dealing with the people of new territories or possessions, is bound to respect the fundamental guaranties of life, liberty, and property, but assumes that Congress is not bound, in those territories or possessions, to follow the rules of taxation prescribed by the Constitution. And yet the power to tax involves the power to destroy, and the levy of duties touches all our people in all places under the jurisdiction of the government.

The logical result is that Congress may prohibit commerce altogether between the states and territories, and may prescribe one rule of taxation in one territory, and a different rule in another.

That theory assumes that the Constitution created a government empowered to acquire countries throughout the world, to be governed by different rules than those obtaining in the original states and territories, and substitutes for the present system of republiean government a system of domination over distant provinces in the exercise of unrestricted power.

In our judgment, so much of the Porto Rican act as author- [182 U.S. 244, 374] ized the imposition of these duties is invalid, and plaintiffs were entitled to recover.

Some argument was made as to general consequences apprehended to flow from this result, but the language of the Constitution is too plain and unambiguous to permit its meaning to be thus influenced. There is nothing 'in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument as to justify those who expound the Constitution' in giving it a construction not warranted by its words.

Briefs have been presented at this bar, purporting to be on behalf of certain industries, and eloquently setting forth the desirability that our government should possess the power to impose a tariff on the products of newly acquired territories so as to diminish or remove competition. That however, furnishes no basis for judicial judgment, and if the producers of staples in the existing states of this Union believe the Constitution should be amended so as to reach that result, the instrument itself provides how such amendment can be accomplished. The people of all the states are entitled to a voice in the settlement of that subject.

Again, it is objected on behalf of the government that the possession of absolute power is essential to the acquisition of vast and distant territories, and that we should regard the situation as it is to-day, rather than as it was a century ago. 'We must look at the situation as comprehending a possibility-I do not say a probability, but a possibility- that the question might be as to the powers of this government in the acquisition of Egypt and the Soudan, or a section of Central Africa, or a spot in the Antarctic Circle, or a section of the Chinese Empire.'

But it must be remembered that, as Marshall and Story declared, the Constitution was framed for ages to come, and that the sagacious men who framed it were well aware that a mighty future waited on their work. The rising sun to which Franklin referred at the close of the convention, they well knew, was that star of empire whose course Berkeley had sung sixty years before.

They may not, indeed, have deliberately considered a trium- [182 U.S. 244, 375] phal progress of the nation, as such, around the earth, but as Marshall wrote: 'It is not enough to say that this particular case was not in the mind of the convention when the article was framed, nor of the American people when it was adopted. It is necessary to go further, and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exeption.'

This cannot be said, and on the contrary, in order to the successful extension of our institutions, the reasonable presumption is that the limitations on the exertion of arbitrary power would have been made more rigorous.

After all, these arguments are merely political, and 'political reasons have not the requisite certainty to afford rules of judicial interpretation.'

Congress has power to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution in the government of the United States, or in any department or officer thereof. If the end be legitimate and within the scope of the Constitution, then, to accomplish it, Congress may use 'all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution.'

The grave duty of determining whether an act of Congress does or does not comply with these requirements is only to be discharged by apply in the well-settled rules which govern the interpretation of fundamental law, unaffected by the theoretical opinions of individuals.

Tested by those rules our conviction is that the imposition of these duties cannot be sustained.

Mr. Justice Harlan, dissenting:

I concur in the dissenting opinion of the Chief Justice. The grounds upon which he and Mr. Justice Brewer and Mr. Justice Peckham regard the Foraker act as unconstitutional in the particulars involved in this action meet my entire approval. [182 U.S. 244, 376] Those grounds need not be restated, nor is it necessary to re-examine the authorities cited by the Chief Justice. I agree in holding that Porto Rico- at least after the ratification of the treaty with Spain-became a part of the United States within the meaning of the section of the Constitution enumerating the powers of Congress, and providing the 'all duties, imposts, and excises shall be uniform throughout the United States.'

In view, however, of the importance of the questions in this case, and of the consequences that will follow any conclusion reached by the court, I deem it appropriate-without rediscussing the principal questions presented-to add some observations suggested by certain passages in opinions just delivered in support of the judgment.

In one of those opinions it is said that 'the Constitution was created by the people of the United States, as a union of states, to be governed solely by representatives of the states;' also, that 'we find the Constitution speaking only to states, except in the territorial clause, which is absolute in its terms, and suggestive of no limitations upon the power of Congress in dealing with them.' I am not sure that I correctly interpret these words. But if it is meant, as I assume it is meant, that, with the exception named, the Constitution was ordained by the states, and is addressed to and operates only on the staes, I cannot accept that view.

In Martin v. Hunter, 1 Wheat. 304, 324, 326, 331, 4 L. ed. 97, 102, 104, this court speaking by Mr. Justice Story, said that 'the Constitution of the United States was ordained and established, not by the states in their sovereign capacities but emphatically, as the preamble of the Constitution declares, by 'the People of the United States."

In McCulloch v. Maryland, 4 Wheat. 316, 403-406, 4 L. ed. 579, 600, 601, Chief Justice Marshall, speaking for this court, said: 'The government proceeds directly from the people; is 'ordained and established' in the name of the people; and is declared to be ordained 'in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and to their posterity.' The assent of the states, in their sovereign capacity, is implied in calling a con- [182 U.S. 244, 377] vention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negatived, by the state governments. The Constitution, when thus adopted, was of complete obligation, and bound the state sovereignties. . . . The government of the union, then (whatever may be the influence of this fact on the case) is emphatically and truly a government of the people. In form and

in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them and for their benefit. This government is acknowledged by all to be one of enumerated powers. . . . It is the government of all; its powers are delegated by all; it represents all, and acts for all.'

Although the states are constituent parts of the United States, the government rests upon the authority of the people of the United States, and not on that of the states. Chief Justice Marshall, delivering the unanimous judgment of this court in Cohen v. Virginia, 6 Wheat. 264, 413, 5 L. ed. 257, 293, said: 'That the United States form, for many and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace, we are one people. . . . In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests . . . is the government of the Union. It is their government, and in that character they have no other. America has chosen to be, in many respects and to many purposes, a nation; and for all these purposes her government is complete; to all these objects it is competent. The people have declared that in the exercise of all powers given for those objects it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory.'

In reference to the doctrine that the Constitution was established by and for the states as distinct political organizations, Mr. Webster said: 'The Constitution itself in its very front refutes that. It declares that it is ordained and established by [182 U.S. 244, 378] the People of the United States. So far from saying that it is established by the governments of the several states, it does not even say that it is established by the people of the several states. But it pronounces that it was established by the people of the United States in the aggregate. Doubtless, the people of the several states, taken collectively, constitute the people of the United States. But it is in this their collective capacity, it is as all the people of the United States, that they established the Constitution.'

In view of the adjudications of this court I cannot assent to the proposition, whether it be announced in express words or by implication, that the national government is a government of or by the states in union, and that the prohibitions and limitations of the Constitution are addressed only to the states. That is but another form of saying that, like the government created by the Articles of Confederation, the present government is a mere league of states, held together by compact between themselves; whereas, as this court has often declared, it is a government created by the People of the United States, with enumerated powers, and supreme over states and individuals with respect to certain objects, throughout the entire territory over which its jurisdiction extends. If the national government is in any sense a compact, it is a compact between the People of the United States among themselves as constituting in the aggregate the political community by whom the national government was established. The Constitution speaks, not simply to the states in their organized capacities, but to all peoples, whether of states or territories, who are subject to the authority of the United States. Martin v. Hunter, 1 Wheat. 327, 4 L. ed. 103.

In the opinion to which I am referring it is also said that the 'practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect that the Constitution is applicable to territories acquired by purchase or conquest only when and so far as Congress shall so direct;' that while all power of government may be abused, the same may be said of the power of the government 'under the Constitution as well as outside of it;' that 'if it once be conceded that we are at liberty to acquire foreign territory, a presumption arises that [182 U.S. 244, 379] our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories acquired by them;' that 'the liberality of Congress in legislating the Constitution into all our contiguous territories has undoubtedly fostered the impression that it went there by its own force, but there is nothing in the Constitution itself and little in the interpretation put upon it, to confirm that impression;' that as the states could only delegate to Congress such powers as they themselves

possessed, and as they had no power to acquire new territory, and therefore none to delegate in that connection, the logical inference is that 'if Congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions;' that if 'we assume that the territorial clause of the Constitution was not intended to be restricted to such territory as the United States then possessed, there is nothing in the Constitution to indicate that the power of Congress in dealing with them was intended to be restricted by any of the other provisions;' and that 'the execuive and legislative departments of the government have for more than a century interpreted this silence as precluding the idea that the Constitution attached to these territories as soon as acquired.'

These are words of weighty import. They involve consequences of the most momentous character. I take leave to say that if the principles thus announced should ever receive the sanction of a majority of this court, a radical and mischievous change in our system of government will be the result. We will, in that event, pass from the era of constitutional liberty guarded and protected by a written constitution into an era of legislative absolutism.

Although from the foundation of the government this court has held steadily to the view that the government of the United States was one of enumerated powers, and that no one of its branches, nor all of its branches combined, could constitutionally exercise powers not granted, or which were not necessarily implied from those expressly granted (Martin v. Hunter, 1 Wheat. 326, 331, 4 L. ed. 102, 104) we are now informed that Congress possesses powers outside of the Constitution, and may deal with new er- [182 U.S. 244, 380] ritory, acquired by treaty or conquest, in the same manner as other nations have been accustomed to act with respect to territories acquired by them. In my opinion, Congress has no existence and can exercise no authority outside of the Constitution. Still less is it true that Congress can deal with new territories just as other nations have done or may do with their new territories. This nation is under the control of a written constitution, the supreme law of the land and the only source of the powers which our government, or any branch or officer of it, may exert at any time or at any place. Monarchical and despotic governments, unrestrained by written constitutions, may do with newly acquired territories what this government may not do consistently with our fundamental law. To say otherwise is to concede that Congress may, by action taken outside of the Constitution, engraft upon our republican institutions a colonial system such as exists under monarchical governments. Surely such a result was never contemplated by the fathers of the Constitution. If that instrument had contained a word suggesting the possibility of a result of that character it would never have been adopted by the people of the United States. The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces,-the people inhabiting them to enjoy only such rights as Congress chooses to accord to them,-is wholly inconsistent with the spirit and genius, as well as with the words, of the Constitution.

The idea prevails with some-indeed, it found expression in agruments at the bar-that we have in this country substantially or practically two national governments; one to be maintained under the Constitution, with all its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise. It is one thing to give such a latitudinarian construction to the Constitution as will bring the exercise of power by Congress, upon a particular occasion or upon a particular subject, within its provisions. It is quite a different thing to say that Congress may, if it so elects, proceed outside of the Constitution. The glory of our American system [182 U.S. 244, 381] of government is that it was created by a written constitution which protects the people against the exercise of arbitrary, unlimited power, and the limits of which instrument may not be passed by the government it created, or by any branch of it, or even by the people who ordained it, except by amendment or change of its provisions. 'To what purpose,' Chief Justice Marshall said in Marbury v. Madison, 1 Cranch, 137, 176, 2 L. ed. 60, 73, 'are powers limited, and to what purpose is that limitation committed to writting, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited

powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.'

The wise men who framed the Constitution, and the patriotic people who adopted it, were unwilling to depend for their safety upon what, in the opinion referred to, is described as 'certain principles of natural justice inherent in Anglo-Saxon character, which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests.' They proceeded upon the theory-the wisdom of which experience has vindicated- that the only safe guaranty against governmental oppression was to withhold or restrict the power to oppress. They well remembered that Anglo- Saxons across the ocean had attempted, in defiance of law and justice, to trample upon the rights of Anglo-Saxons on this continent, and had sought, by military force, to establish a government that could at will destroy the privileges that inhere in liberty. They believed that the establishment here of a government that could administer public affairs according to its will, unrestrained by any fundamental law and without regard to the inherent rights of freemen, would be ruinous to the liberties of the people by exposing them to the oppressions of arbitrary power. Hence, the Constitution enumerates the powers which Congress and the other departments may exercise,-leaving unimpaired, to the states or the People, the powers not delegated to the national government nor prohibited to the states. That instrument so expressly declares in [182 U.S. 244, 382] the 10th Article of Amendment. It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution.

Again, it is said that Congress has assumed, in its past history, that the Constitution goes into territories acquired by purchase or conquest only when and as it shall so direct, and we are informed of the liberality of Congress in legislating the Constitution into all our contiguous territories. This is a view of the Constitution that may well cause surprise, if not alarm. Congress, as I have observed, has no existence except by virtue of the Constitution. It is the creature of the Constitution. It has no powers which that instrument has not granted, expressly or by necessary implication. I confess that I cannot grasp the thought that Congress, which lives and moves and has its being in the Constitution, and is consequently the mere creature of that instrument, can, at its pleasure, legislate or exclude its creator from territories which were acquired only by authority of the Constitution.

By the express words of the Constitution, every Senator and Representative is bound, by oath or affirmation, to regard it as the supreme law of the land. When the constitutional convention was in session there was much discussion as to the phraseology of the clause defining the supremacy of the Constitution, laws, and treaties of the United States. At one stage of the proceedings the convention adopted the following clause: 'This Constitution, and the laws of the United States made in pursuance thereof, and all the treaties made under the authority of the United States, shall be the supreme law of the several states and of their citizens and inhabitants, and the judges of the several states shall be bound thereby in their decisions, anything in the constitutions or laws of the several states to the contrary notwithstanding.' This clause was amended, on motion of Mr. Madison, by inserting after the words 'all treaties made' the words 'or which shall be made.' If the clause, so amended had been inserted in the Constitution as finally adopted, per- [182 U.S. 244, 383] haps there would have been some justification for saying that the Constitution, laws, and treaties of the United States constituted the supreme law only in the states, and that outside of the states the will of Congress was supreme. But the framers of the Constitution saw the danger of such a provision, and put into that instrument in place of the above clause the following: 'This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.' Meigs's Growth of the Constitution, 284, 287. That the convention struck out the words 'the supreme law of the several states,'

and inserted 'the supreme law of the land,' is a fact of no little significance. The 'land' referred to manifestly embraced all the peoples and all the territory, whether within or without the states, over which the United States could exercise jurisdiction or authority.

Further, it is admitted that some of the provisions of the Constitution do apply to Porto Rico, and may be invoked as limiting or restricting the authority of Congress, or for the protection of the people of that island. And it is said that there is a clear distinction between such prohibitions 'as go to the very root of the power of Congress to act at all, irrespective of time or place, and such as are operative only 'throughout the United States' or among the several states.' In the enforcement of this suggestion it is said in one of the opinions just delivered: 'Thus, when the Constitution declares that 'no bill of attainder or ex post facto law shall be passed,' and that 'no title of nobility shall be granted by the United States,' it goes to the competency of Congress to pass a bill of that description.' I cannot accept this reasoning as consistent with the Constitution or with sound rules of interpretation. The express prohibition upon the passage by Congress of bills of attainder, or of ex post facto laws, or the granting of titles of nobility, goes no more directly to the root of the power of Congress than does the express prohibition against the imposition by Congress of any [182 U.S. 244, 384] duty, impost, or excise that is not uniform throughout the United States. The opposite theory, I take leave to say, is quite as extraordinary as that which assumes that Congress may exercise powers outside of the Constitution, and may, in its discretion, legislate that instrument into or out of a domestic territory of the United States.

In the opinion to which I have referred it is suggested that conditions may arise when the annexation of distant possessions may be desirable. 'If,' says that opinion, 'those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that ultimately our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action.' In my judgment, the Constitution does not sustain any such theory of our governmental system. Whether a particular race will or will not assimilate with our people, and whether they can or cannot with safety to our institutions be brought within the operation of the Constitution, is a matter to be thought of when it is proposed to acquire their territory by treaty. A mistake in the acquisition of territory, although such acquisition seemed at the time to be necessary, cannot be made the ground for violating the Constitution or refusing to give full effect to its provisions. The Constitution is not to be obeyed or disobeyed as the circumstances of a particular crisis in our history may suggest the one or the other course to be pursued. The People have decreed that it shall be the supreme law of the land at all times. When the acquisition of territory becomes complete, by cession, the Constitution necessarily becomes the supreme law of such new territory, and no power exists in any department of the government to make 'concessions' that are inconsistent with its provisions. The authority to make such concessions implies the existence in Congress of power to declare that constitutional provisions may be ignored under special or [182 U.S. 244, 385] embarrassing circumstances. No such dispensing power exists in any branch of our government. The Constitution is supreme over every foot of territory, wherever situated, under the jurisdiction of the United States, and its full operation cannot be stayed by any branch of the government in order to meet what some may suppose to be extraordinary emergencies. If the Constitution is in force in any territory, it is in force there for every purpose embraced by the objects for which the government was ordained. Its authority cannot be displaced by concessions, even if it be true, as asserted in argument in some of these cases, that if the tariff act took effect in the Philippines of its own force, the inhabitants of Mandanao, who live on imported rice, would starve, because the import duty is many fold more than the ordinary cost of the grain to them. The meaning of the Constitution cannot depend upon accidental circumstances arising out of the products of other countries or of this country. We cannot violate the Constitution in order to serve particular interests in our own or in foreign lands. Even this court, with its tremendous power, must

heed the mandate of the Constitution. No one in official station, to whatever department of the government he belongs, can disobey its commands without violating the obligation of the oath he has taken. By whomsoever and wherever power is exercised in the name and under the authority of the United States, or of any branch of its government, the validity or invalidity of that which is done must be determined by the Constitution.

In De Lima v. Bidwell, just decided, 181 U. S. --, ante, 743, 21 Sup. Ct. Rep. 743, we have held that, upon the ratification of the treaty with Spain, Porto Rico ceased to be a foreign country and became a domestic territory of the United States. We have said in that case that from 1803 to the present time there was not a shred of authority, except a dictum in one case, 'for holding that a district ceded to and in possession of the United States remains for any purpose a foreign territory;' that territory so acquired cannot be 'domestic for one purpose and foreign for another;' and that any judgment to the contrary would be 'pure judicial legislation,' for which there was no warrant in the Constitution or in the powers conferred upon this court. Although, as we have just decided, [182 U.S. 244, 386] Porto Rico ceased, after the ratification of the treaty with Spain, to be a foreign country within the meaning of the tariff act, and became a domestic country,-'a territory of the United States,'-it is said that if Congress so wills it may be controlled and governed outside of the Constitution and by the exertion of the powers which other nations have been accustomed to exercise with respect to territories acquired by them; in other words, we may solve the question of the power of Congress under the Constitution by referring to the powers that may be exercised by other nations. I cannot assent to this view. I reject altogether the theory that Congress, in its discretion, can exclude the Constitution from a domestic territory of the United States, acquired, and which could only have been acquired, in virtue of the Constitution. I cannot agree that it is a domestic territory of the United States for the purpose of preventing the application of the tariff act imposing duties upon imports from foreign countries, but not a part of the United States for the purpose of enforcing the constitutional requirement that all duties, imposts, and excises imposed by Congress 'shall be uniform throughout the United States.' How Porto Rico can be a domestic territory of the United States, as distinctly held in De Lima v. Bidwell, and yet, as is now held, not embraced by the words 'throughout the United States,' is more than I can understand.

We heard much in argument about the 'expanding future of our country.' It was said that the United States is to become what is called a 'world power;' and that if this government intends to keep abreast of the times and be equal to the great destiny that awaits the American people, it must be allowed to exert all the power that other nations are accustomed to exercise. My answer is, that the fathers never intended that the authority and influence of this nation should be exerted otherwise than in accordance with the Constitution. If our government needs more power than is conferred upon it by the Constitution, that instrument provides the mode in which it may be amended and additional power thereby obtained. The People of the United States who ordained the Constitution never supposed that a change could be made in our system of govern- [182 U.S. 244, 387] ment by mere judicial interpretation. They never contemplated any such juggling with the words of the Constitution as would authorize the courts to hold that the words 'throughout the United States,' in the taxing clause of the Constitution, do not embrace a domestic 'territory of the United States' having a civil government established by the authority of the United States. This is a distinction which I am unable to make, and which I do not think ought to be made when we are endeavoring to ascertain the meaning of a great instrument of government.

There are other matters to which I desire to refer. In one of the opinions just delivered the case of Neely v. Henkel, 180 U.S. 119 , ante, 302, 21 Sup. Ct. Rep. 302, is cited in support of the proposition that the provision of the Foraker act here involved was consistent with the Constitution. If the contrary had not been asserted I should have said that the judgment in that case did not have the slightest bearing on the question before us. The only inquiry there was whether Cuba was a foreign country or territory within the meaning, not of the tariff act, but of the act of June 6th, 1900 (31 Stat. at L. 656, chap. 793). We

held that it was a foreign country. We could not have held otherwise, because the United States, when recognizing the existence of war between this country and Spain, disclaimed 'any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof,' and asserted 'its determination, when that is accomplished, to leave the government and control of the island to its people.' We said: 'While by the act of April 25th, 1898, declaring war between this country and Spain, the President was directed and empowered to use our entire land and naval forces, as well as the militia of the several states, to such extent as was necessary to carry such act into effect, that authorization was not for the purpose of making Cuba an integral part of the United States, but only for the purpose of compelling the relinquishment by Spain of its authority and government in that island and the withdrawal of its forces from Cuba and Cuban waters. The legislative and executive branches of the government, by the joint resolution of April 20th, 1898, expressly disclaimed any purpose to exercise sovereignty juris- [182 U.S. 244, 388] diction, or control over Cuba 'except for the pacification thereof,' and asserted the determination of the United States, that object being accomplished, to leave the government and control of Cuba to its own people. All that has been done in relation to Cuba has had that end in view, and, so far as the court is informed by the public history of the relations of this country with that island, nothing has been done inconsistent with the declared object of the war with Spain. Cuba is none the less foreign territory, within the meaning of the act of Congress, because it is under a military governor appointed by and representing the President in the work of assisting the inhabitants of that island to establish a government of their own, under which, as a free and independent people, they may control their own affairs without interference by other nations. The occupancy of the island by troops of the United States was the necessary result of the war. That result could not have been avoided by the United States consistently with the principles of international law or with its obligations to the people of Cuba. It is true that as between Spain and the United States,-indeed, as between the United States and all foreign nations,-Cuba, upon the cessation of hostilities with Spain and after the treaty of Paris, was to be treated as if it were conquered territory. But as between the United States and Cuba, that island is territory held in trust for the inhabitants of Cuba to whom it rightfully belongs, and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action.' In answer to the suggestion that, under the modes of trial there adopted, Neely, if taken to Cuba, would be denied the rights, privileges, and immunities accorded by our Constitution to persons charged with crime against the United States, we said that the constitutional provisions referred to 'have no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country.' What use can be made of that case in order to prove that the Constitution is not in force in a territory of the United States acquired by treaty, except as Congress may provide, is more than I can perceive.

There is still another view taken of this case. Conceding [182 U.S. 244, 389] that the national government is one of enumerated powers, to be exerted only for the limited objects defined in the Constitution, and that Congress has no power, except as given by that instrument either expressly or by necessary implication, it is yet said that a new territory, acquired by treaty or conquest, cannot become incorporated into the United States without the consent of Congress. What is meant by such incorporation we are not fully informed, nor are we instructed as to the precise mode in which it is to be accomplished. Of course, no territory can become a state in virtue of a treaty or without the consent of the legislative branch of the government; for only Congress is given power by the Constitution to admit new states. But it is an entirely different question whether a domestic 'territory of the United States,' having an organized civil government established by Congress, is not, for all purposes of government by the nation, under the complete jurisdiction of the United States, and therefore a part of, and incorporated into, the United States, subject to all the authority which the national government may exert over any territory or people. If Porto Rico, although a territory of the United States, may be treated as if it were not a part of the United States, then New Mexico and Arizona may be treated as not parts of the United States, and subject to such legislation as Congress may choose to enact without any reference to the restrictions imposed by the Constitution. The admission that no power can be exercised

under and by authority of the United States except in accordance with the Constitution is of no practical value whatever to constitutional liberty, if, as soon as the admission is made,-as quickly as the words expressing the thought can be uttered,-the Constitution is so liberally interpreted as to produce the same results as those which flow from the theory that Congress may go outside of the Constitution in dealing with newly acquired territories, and give them the benefit of that instrument only when and as it shall direct.

Can it for a moment be doubted that the addition of Porto Rico to the territory of the United States in virtue of the treaty with Spain has been recognized by direct action upon the part of Congress? Has it not legislated in recognition of that treaty, [182 U.S. 244, 390] and appropriated the money which it required this country to pay?

If, by virtue of the ratification of the treaty with Spain, and the appropriation of the amount which that treaty required this country to pay, Porto Rico could not become a part of the United States so as to be embraced by the words 'throughout the United States,' did it not become 'incorporated' into the United States when Congress passed the Foraker act? 31 Stat. at L. 77, chap. 191. What did that act do? It provided a civil government for Porto Rico, with legislative, executive, and judicial departments; also, for the appointment by the President, by and with the advice and consent of the Senate of the United States, of a 'governor, secretary, attorney general, treasurer, auditor, commissioner of the interior, and a commissioner of education.' 17-25. It provided for an executive council, the members of which should be appointed by the President, by and with the advice and consent of the Senate. 18. The governor was required to report all transactions of the government in Porto Rico to the President of the United States. 17. Provision was made for the coins of the United States to take the place of Porto Rican coins . 11. All laws enacted by the Porto Rican legislative assembly were required to be reported to the Congress of the United States, which reserved the power and authority to amend the same. 31. But that was not all. Except as otherwise provided, and except also the internal revenue laws, the statutory laws of the United States, not locally inapplicable, are to have the same force and effect in Porto Rico as in the United States. 14. A judicial department was established in Porto Rico, with a judge to be appointed by the President, by and with the advice and consent of the Senate. 33. The court so established was to be known as the district court of the United States for Porto Rico, from which writs of error and appeals were to be allowed to this court. 34. All judicial process, it was provided, 'shall run in the name of the United States of America, ss: the President of the United States.' 16. And yet it is said that Porto Rico was not 'incorporated' by the Foraker act into the United States so as to be part of the United States within the [182 U.S. 244, 391] meaning of the constitutional requirement that all duties, imposts, and excises imposed by Congress shall be uniform 'throughout the United States.'

It would seem, according to the theories of some, that even if Porto Rico is in and of the United States for many important purposes, it is yet not a part of this country with the privilege of protesting against a rule of taxation which Congress is expressly forbidden by the Constitution from adopting as to any part of the 'United States.' And this result comes from the failure of Congress to use the word 'incorporate' in the Foraker act, although by the same act all power exercised by the civil government in Porto Rico is by authority of the United States, and although this court has been given jurisdiction by writ of error or appeal to re-examine the final judgments of the district court of the United States established by Congress for that territory. Suppose Congress had passed this act: 'Be it enacted by the Senate and House of Representatives in Congress assembled, That Porto Rico be and is hereby incorporated into the United States as a territory,' would such a statute have enlarged the scope or effect of the Foraker act? Would such a statute have accomplished more than the Foraker act has done? Indeed, would not such legislation have been regarded as most extraordinary as well as unnecessary?

I am constrained to say that this idea of 'incorporation' has some occult meaning which my mind does

not apprehend. It is enveloped in some mystery which I am unable to unravel.

In my opinion Porto Rico became, at least after the ratification of the treaty with Spain, a part of and subject to the jurisdiction of the United States in respect of all its territory and people, and that Congress could not thereafter impose any duty, impost, or excise with respect to that island and its inhabitants, which departed from the rule of uniformity established by the Constitution.

Footnotes

[Footnote 1] Marbury v. Madison, 1 Cranch, 176, 2 L. ed. 73 et seq.; Martin v. Hunter, 1 Wheat. 326, 4 L. ed. 102; New Orleans v. United States, 10 Pet. 662, 736, 9 L. ed. 573, 602; De Geofroy v. Riggs, 133 U.S. 258, 266 , 33 S. L. ed. 642, 644, 10 Sup. Ct. Rep. 295; United States v. Gettysburg Electric R. Co. 160 U.S. 668, 679 , 40 S. L. ed. 576, 580, 16 Sup. Ct. Rep. 427, and cases cited.

[Footnote 2] The City of Panama, 101 U.S. 453, 460 , 25 S. L. ed. 1061, 1064; Fong Yue Ting v. United States, 149 U.S. 716, 738 , 37 S. L. ed. 914, 921, 13 Sup. Ct. Rep. 1016.

[Footnote 3] Monongahela Nav. Co. v. United States, 148 U.S. 312, 336 , 37 S. L. ed. 463, 471, 13 Sup. Ct. Rep. 622; Interstate Commerce Commission v. Brimson, 154 U.S. 447, 479 , 38 S. L. ed. 1047, 1058, 4 Inters. Com. Rep. 545, 14 Sup. Ct. Rep. 1125; United States v. Joint Traffic Asso. 171 U.S. 571 , 43 L. ed. 288, 19 Sup. Ct. Rep. 25.

[Footnote 4] United States v. Kagama, 118 U.S. 375, 378 , 30 S. L. ed. 228, 229, 6 Sup. Ct. Rep. 1109; Shively v. Bowlby, 152 U.S. 1, 48 , 38 S. L. ed. 331, 349, 14 Sup. Ct. Rep. 548.

[Footnote 5] Sere v. Pitot, 6 Cranch, 332, 336, 3 L. ed. 240, 241; M'Culloch v. Maryland, 4 Wheat. 316, 421, 4 L. ed. 579, 605; American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 542, 7 L. ed. 242, 255; United States v. Gratiot, 14 Pet. 526, 537, 10 L. ed. 573, 578; Scott v. Sandford, 19 How. 448, 15 L. ed. 718; Clinton v. Englebrecht, 13 Wall. 434, 447, 20 L. ed. 659, 662; Hamilton v. Dillin, 21 Wall. 73, 93, 22 L. ed. 528, 532; First Nat. Bank v. Yankton County, 101 U.S. 129, 132 , 25 S. L. ed. 1046, 1047; The City of Panama, 101 U.S. 453 , 457, sub nom. The City of Panama v. Phelps, 25 L. ed. 1061, 1062; Murphy v. Ramsey, 114 U.S. 15, 44 , 29 S. L. ed. 47, 57, 5 Sup. Ct. Rep. 747; United States v. Kagama, 118 U.S. 375, 380 , 30 S. L. ed. 228, 230, 6 Sup. Ct. Rep. 1109; Church of Jesus Christ of L. D. S. v. United States, 136 U.S. 1, 42 , 34 S. L. ed. 478, 490, 10 Sup. Ct. Rep. 792; Boyd v. Nebraska ex rel. Thayer, 143 U.S. 135, 169 , 36 S. L. ed. 103, 112, 12 Sup. Ct. Rep. 375.

[Footnote 6] Church of Jesus Christ of L. D. S. v. United States, 136 U.S. 1, 44 , 34 S. L. ed. 478, 491, 10 Sup. Ct. Rep. 792.

[Footnote 7] Loughborough v. Blake, 5 Wheat. 317, 322, 5 L. ed. 98, 99; Woodruff v. Parham, 8 Wall. 123, 133, 19 L. ed. 382, 385; Brown v. Houston, 114 U.S. 622, 628 , 29 S. L. ed. 257, 259, 5 Sup. Ct. Rep. 1091; Fairbank v. United States, 181, U. S. 283, ante, 648, 21 Sup. Ct. Rep. 648.

[Footnote 8] American Ins. Co. v. 356 Bales of Cotton, 1 Pet. 511, 7 L. ed. 242; Benner v. Porter, 9 How. 235, 13 L. ed. 119; Webster v. Reid, 11 How. 437, 460, 13 L. ed. 761, 770; Clinton v. Englebrecht, 13 Wall. 434, 20 L. ed. 659; Reynolds v. United States, 98 U.S. 145 , 25 L. ed. 244; Callan v. Wilson, 127 U.S. 540 , 32 L. ed. 223, 8 Sup. Ct. Rep. 1301; McAllister v. United States, 141 U.S. 174 , 35 L. ed. 693, 11 Sup. Ct. Rep. 949; Springville v. Thomas, 166 U.S. 707 , 41 L. ed. 1172, 17 Sup. Ct. Rep. 717; Bauman v. Ross, 167 U.S. 548 , 42 L. ed. 270, 17 Sup. Ct. Rep. 966; Thompson v. Utah, 170 U.S. 343 , 42 L. ed. 1061, 18 Sup. Ct. Rep. 620; Capital Traction Co. v. Hof, 174 U.S. 1 , 43

L. ed. 873, 19 Sup. Ct. Rep. 580; Black v. Jackson, 177 U.S. 363 , 44 L. ed. 807, 20 Sup. Ct. Rep. 648.

[Footnote 9] Re Ross, 140 U.S. 453, 461 , 462 S., 463, sub nom. Ross v. McIntyre, 35 L. ed. 581, 585, 11 Sup. Ct. Rep. 897.

[Footnote 10] Extract from the Free Soil Party Platform of 1842 (Standwood, Hist. of Presidency, p. 240):

> 'Resolved, That our fathers ordained the Constitution of the United States in order, among other great national objects, to establish justice, promote the general welfare, and secure the blessings of liberty, but expressly denied to the Federal government which they created, all constitutional power to deprive any person of life, liberty, or property without due legal process.
>
> 'Resolved, That, in the judgment of this convention, Congress has no more power to make a slave than to make a king; no more power to institute or establish slavery than to institute or establish a monarchy. No such power can be found among those specifically conferred by the Constitution, or derived by any just implication from them.
>
> 'Resolved, That it is the duty of the Federal government to relieve itself from all responsibility for the existence or continuance of slavery wherever the government possesses constitutional authority to legislate on that subject, and is thus responsible for its existence.
>
> 'Resolved, That the true, and in the judgment of this convention the only safe, means of preventing the extension of slavery into territory now free, is to prohibit its existence in all such territory by an act of Congress.'

[Footnote 11] Excerpt from Declarations Made in the Platform of the Republican Party in 1860 (Stanwood, Hist. of Presidency, p. 293):

> '8. That the normal condition of all the territory of the United States is that of freedom; that as our republican fathers, when they had abolished slavery in all our national territory, ordained that no person should be deprived of life, liberty, or property without due process of law, it becomes our duty, by legislation, whenever such legislation is necessary, to maintain this provision of the Constitution against all attempts to violate it; and we deny the authority of Congress, of a territorial legislature, or of any individual, to give legal existence to slavery in any territory of the United States.'

[Footnote 12] First draft of Mr. Jefferson's proposed amendment to the Constitution: 'The province of Louisiana is incorporated with the United States and made part thereof. The rights of occupancy in the soil and of self-government are confirmed to Indian inhabitants as they now exist.' It then proceeded with other provisions relative to Indian rights and possession and exchange of lands, and forbidding Congress to dispose of the lands otherwise than is therein provided without further amendment to the Constitution. This draft closes thus: 'Except as to that portion thereof which lies south of the latitude of 31ø, which, whenever they deem expedient, they may enact into a territorial government, either separate or as making part with one on the eastern side of the river, vesting the inhabitants thereof with all rights possessed by other territorial citizens of the United States.' Writings of Jefferson, edited by Ford, vol. 8, p. 241.

[Footnote 13] Letter to William Dunbar of July 7, 1803;

> 'Before you receive this you will have heard through the channel of the public papers of the cession of Louisiana by France to the United States. The terms as stated in the National Intelligencer are accurate. That the treaty may be ratified in time, I have found it necessary to convene Congress on the 17th of October, and it is very important for the happiness of the country that they should possess all information which can be obtained respecting it, that they make the best arrangements practicable for its good government. It is most necessary because they will be obliged to ask from the people an amendment of the Constitution authorizing their receiving the province into the Union and providing for its government, and limitations of power which shall be given by that amendment will be unalterable but by the same authority.' Jefferson's Writings, vol. 8, p. 254.

Letter to Wilson Cary Nicholas of September 7, 1803:

> 'I am aware of the force of the observations you make on the power given by the Constitution to Congress to admit new states into the Union without restraining the subject to the territory then constituting the United States. But when I consider that the limits of the United States are precisely fixed by the treaty of 1783, that the Constitution expressly declares itself to be made for the United States, I cannot help believing that the intention was to permit Congress to admit into the Union new states which should be formed out of the territory for which and under whose authority alone they were then acting. I do not believe it was meant that they might receive England, Ireland, Holland, etc., into it, which would be the case under your construction. When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation where it is found necessary, than to assume it by a construction which would make our powers boundless.' Writings of Jefferson, vol. 8, p. 247.

[Footnote 14] Sec. 2. That on and after the passage of this act the same tariffs, customs, and duties shall be levied, collected, and paid upon all articles imported into Porto Rico from ports other than those of the United States which are required by law to be collected upon articles imported into the United States from foreign countries: Provided, That on all coffee in the bean or ground imported into Porto Rico there shall be levied and collected a duty of five cents per pound, any law or part of law to the contrary notwithstanding: And provided further, That all Spanish scientific, literary, and artistic works, not subversive of public order in Porto Rico, shall be admitted free of duty into Porto Rico for a period of ten years, reckoning from the eleventh day of April, eighteen hundred and ninety-nine, as provided in said treaty of peace between the United States and Spain: And provided further, That all books and pamphlets printed in the English language shall be admitted into Porto Rico free of duty when imported from the United States.

Sec. 3. That on and after the passage of this act all merchandise coming into the United States from Porto Rico and coming into Porto Rico from the United States shall be entered at the several ports of entry upon payment of fifteen per centum of the duties which are required to be levied, collected, and paid upon like articles of merchandise imported from foreign countries; and in addition thereto, upon articles of merchandise of Porto Rican manufacture coming into the United States and withdrawn for consumption or sale, upon payment of a tax equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture; such tax to be paid by internal revenue stamp or stamps to be purchased and provided by the Commissioner of Internal Revenue, and to be procured from the collector of internal revenue at or most convenient to the port of entry of said merchandise in the United States, and to be affixed under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and on all articles of merchandise of United States manufacture coming into Porto Rico, in addition to the duty above

provided, upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Porto Rico upon the like articles of Porto Rican manufacture: Provided, That on and after the date when this act shall take effect all merchandise and articles, except coffee, not dutiable under the tariff laws of the United States, and all merchandise and articles entered in Porto Rico free of duty under orders heretofore made by the Secretary of War, shall be admitted

into the several ports thereof, when imported from the United States, free of duty, all laws or parts of laws to the contrary notwithstanding; and whenever the legislative assembly of Porto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the government of Porto Rico, by this act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, and thereupon all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico shall cease, and from and after such date all such merchandise and articles shall be entered at the several ports of entry free of duty; and in no event shall any duties be collected after the first day of March, nineteen hundred and two, on merchandise and articles going into Porto Rico from the United States or coming into the United states from Porto Rico.

Sec. 4. That the duties and taxes collected in Porto Rico in pursuance of this act, less the cost of collecting the same, and the gross amount of all collections of duties and taxes in the United States upon articles of merchandise coming from Porto Rico, shall not be covered into the general fund of the Treasury, but shall be held as a separate fund, and shall be placed at the disposal of the President to be used for the government and benefit of Porto Rico until the government of Porto Rico herein provided for shall have been organized, when all moneys theretofore collected under the provisions hereof, then unexpended, shall be transferred to the local treasury of Porto Rico, and the Secretary of the Treasury shall designate the several ports and sub-ports of entry into Porto Rico, and shall make such rules and regulations and appoint such agents as may be necessary to collect the duties and taxes authorized to be levied, collected, and paid in Porto Rico by the provisions of this act, and he shall fix the compensation and provide for the payment thereof of all such officers, agents, and assistants as he may find it necessary to employ to carry out the provisions hereof: Provided, however, That as soon as a civil government for Porto Rico shall have been organized in accordance with the provisions of this act, and notice thereof shall have been given to the President, he shall make proclamation thereof, and thereafter all collections of duties and taxes in Porto Rico under the provisions of this act shall be paid into the treasury of Porto Rico, to be expended as required by law for the government and benefit thereof, instead of being paid into the Treasury of the United States.

Sec. 5: That on and after the day when this act shall go into effect all goods, wares, and merchandise previously imported from Porto Rico, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the duties imposed by this act, and to no other duty, upon the entry or the withdrawal

thereof: Provided, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its entry.

...

Sec. 38. That no export duties shall be levied or collected on exports from Porto Rico; but taxes and assessments on property, and license fees for franchises, privileges, and concessions may be imposed

for the purposes of the insular and municipal governments, respectively, as may be provided and defined by act of the legislative assembly; and where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Porto Rico or any municipal government therein as may be provided by law to provide for expenditures authorized by law, and to protect the public credit, and to reimburse the United States for any moneys which have been or may be expended out of the emergency fund of the War Department for the relief of the industrial conditions of Porto Rico caused by the hurricane of August eighth, eighteen hundred and ninety-nine: Provided, however, That no public indebtedness of Porto Rico or of any municipality thereof shall be authorized or allowed in excess of seven per centum of the aggregate tax valuation of its property.

Internal Revenue Manual

Part 4
Examining Process

Chapter 10
Examination of Returns

Section 7
Issue Resolution

Contents

4.10.7.1 (05-14-1999)
Overview

1. Examiners are responsible for determining the correct tax liability as prescribed by the Internal Revenue Code. It is imperative that examiners can identify the applicable law, correctly interpret its meaning in light of congressional intent, and, in a fair and impartial manner, correctly apply the law based on the facts and circumstances of the case.

2. This chapter addresses five areas:
   A. Researching tax law, 7.2,
   B. Evaluating evidence, 7.3,
   C. Arriving at conclusions, 7.4,
   D. Proposing adjustments to taxpayers and/or representatives, 7.5,
   E. Shift in Burden of Proof, 7.6.

4.10.7.2 (05-14-1999)
Researching Tax Law

1. Conclusions reached by examiners must reflect correct application of the law, regulations, court cases, revenue rulings, etc. Examiners must correctly determine the meaning of statutory provisions and not adopt strained interpretation.
2. The Federal tax system is constantly changing. Examiners must keep well informed of the ever-growing body of tax authorities and advances in the management and storage of information.
3. In the words of Supreme Court Justice Jackson, "No other branch of the law touches human activities at so many points. It can never be made simple." Income tax law is too complex for examiners to immediately perceive its ramifications and provisions in all examinations.
4. This section focuses on researching Federal tax law, evaluating the significance of various authorities, and supporting conclusions reached with appropriate citations. The profiles of various tax authorities in this chapter are intended to help examiners become familiar with the most common, but by no means all, sources or available research techniques.

4.10.7.2.1 (05-14-1999)
Internal Revenue Code

1. The Internal Revenue Code of 1986 is the primary source of Federal tax law. It imposes income, estate, gift, employment, miscellaneous excise taxes, and provisions controlling the administration of Federal taxation. The Code is found at Title 26 of the United States Code (U.S.C.). The United States Code consists of fifty titles.
2. For ease of use, the Code is divided into different units: subtitles, chapters, subchapters, parts, and sections. Listed below are the Code sections which fall within the eleven subtitles of the current Code.

Subtitle	Contents	Code Sections
A	Income Taxes	1-1563
B	Estate and Gift Taxes	2001-2704
C	Employment Taxes	3101-3510
D	Miscellaneous Excise Taxes	4041-5000
E	Alcohol, Tobacco, and Certain Other Excise Taxes	5001-5881
F	Procedure and Administration	6001-7873
G	The Joint Committee on Taxation	8001-8023
H	Financing of Presidential Election Campaigns	9001-9042
I	Trust Fund Code	9500-9602

J	Coal Industry Health Benefits	9701-9722
K	Group Health Plan Portability, Access, and Renewability Requirements	9801-9806

- Sections are usually arranged in numerical order. This sometimes leads to the need to show a Code section number followed by a capital letter not in parentheses. An example is Code §280A. This designation is used because subsequent legislation created additional Code sections in Part IX, requiring the addition of new Code sections after section 280. Since section 281 already existed, new sections were added by creating sections 280A, 280B, 280C, etc.

4.10.7.2.1.1 (05-14-1999)
Authority of the Internal Revenue Code

1. The Internal Revenue Code is generally binding on all courts of law. The courts give great importance to the literal language of the Code but the language does not solve every tax controversy. Courts also consider the history of a particular code section, its relationship to other code sections, committee reports (7.2.2) below, Treasury Regulations (7.2.3) below, and Internal Revenue Service administrative policies.

4.10.7.2.1.2 (05-14-1999)
Citing the Internal Revenue Code

1. It is often necessary to cite Internal Revenue Code sections in reports and to taxpayers in support of a position on an issue. For convenience, the Internal Revenue Code is abbreviated IRC and the symbols § or §§ are often used in place of section and sections respectively.
2. When making reference to a Code section, usually no reference is made to the title, subtitle, chapter, subchapter, or part. Code sections are divided into subsections, paragraphs, subparagraphs, and clauses. For example, IRC § 170(b)(1)(A)(i) is subdivided as follows:
   A. IRC § 170; Code section, Arabic numbers
   B. Subsection (b); lower case letter in parentheses
   C. Paragraph (1); Arabic number in parentheses
   D. Subparagraph (A) ; capital letter in parentheses
   E. Clause (i); lower case Roman numerals in parentheses

4.10.7.2.1.3 (05-14-1999)
Prior Tax Law

1. The Code is continually changing. It is important that examiners determine the law applicable to the year under examination. To do so, determine whether the applicable law has been modified, and if so, the date on which the changes became effective. Many publishers provide this information in small print immediately following the current Code section.

4.10.7.2.2 (05-14-1999)
Committee Reports

1. Federal income tax legislation originates in the House of Representatives. Hearings are held by the House Ways and Means Committee. When a bill is introduced in the House, a Committee Report is published which often states the reason the bill is being proposed. This reasoning establishes the legislative intent behind the finalized law.
2. After the bill clears the House, it is considered by the Senate. The Senate Finance Committee holds hearings and prepares a report explaining any changes made to the

House bill. A Conference Committee later resolves any differences between the House and Senate versions of the bill and issues its own report.

3. When the bill passes both the House and Senate, it is sent to the President to be signed. Once signed, the bill becomes law and a new or amended section of the Code is enacted. Committee Reports are useful tools in determining Congressional intent behind certain tax laws and helping examiners apply the law properly.

4.10.7.2.2.1 (05-14-1999)
Publication of Committee Reports

1. Committee Reports are published in full in the Congressional Record and in part in the Internal Revenue Bulletin and Cumulative Bulletin . Selected reports are found in many commercial tax services.

4.10.7.2.2.2 (05-14-1999)
Citing Committee Reports

1. Committee Reports are identified by a number representing the session of Congress and a sequence number. For example, the Tax Reform Act of 1986 was enacted by Public Law 99-514. House, Senate, and Conference reports accompanying that legislation are cited as follows:
   A. House Report 99-426, 1986-3 C.B. Vol. 2
   B. Senate Report 99-313, 1986-3 C.B. Vol. 3
   C. Conference Report 99-841, 1986-3 C.B. Vol. 4
2. The reports are published in the Cumulative Bulletin (IRM 4.10.7.2.4). In each citation, "99" refers to the 99th Congress. Some publishers refer to the reports collectively as "Committee Reports, P.L. 99-514."

4.10.7.2.3 (05-14-1999)
Code of Federal Regulations

1. The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the Federal Register (F.R.) by the Executive departments and agencies of the Federal Government. It is divided into fifty titles which represent broad areas subject to Federal regulation. Each title is divided into chapters usually bearing the name of the issuing agency. Each chapter is subdivided into parts covering specific regulatory areas. Title 26 comprises the Internal Revenue Regulations and is cited 26 CFR.

4.10.7.2.3.1 (05-14-1999)
Income Tax Regulations

1. The Federal Income Tax Regulations (Regs.) are the official Treasury Department interpretation of the Internal Revenue Code and follow the numbering sequence of Internal Revenue Code sections.

4.10.7.2.3.2 (05-14-1999)
Types of Regulations

1. Legislative and interpretative regulations are issued by the Secretary of the Treasury. If the code states "The Secretary shall provide such regulations . . ." , then the regulations issued are legislative. Interpretative regulations are issued under the general authority of IRC section 7805(a) , which allows regulations to be written when the Secretary determines they are needed to clarify a Code section.
2. The courts consider the merit of both interpretative and legislative regulations.

However, more weight is given to legislative regulations than to interpretative regulations.

4.10.7.2.3.3 (05-14-1999)
Classes of Regulations

1. Regulations are written by the Legislative and Regulations Division or Tax Exempt and Government Entities Office of Associate Chief Counsel (Technical), Internal Revenue Service, and are approved by the Department of the Treasury. There are three classes of regulations: proposed, temporary, and final.
   A. Proposed Regulations – Proposed regulations provide guidance concerning Treasury's interpretation of a Code section, but do not have authoritative weight. The public is given an opportunity to comment on proposed regulations and public hearings may be held if sufficient written requests are received. Since proposed regulations have no authoritative weight, taxpayers and examiners are not bound by them. Proposed regulations become binding when adopted by a Treasury Decision and they become final regulations.
   B. Temporary Regulations – Temporary regulations are often issued soon after a major change to provide guidance for the public and Internal Revenue Service employees with respect to procedural and computational matters. Unlike proposed regulations, temporary regulations are authoritative and have the same weight as final regulations. Public hearings are not held on temporary regulations.
   C. Final Regulations – Final regulations are issued after public comments on proposed regulations are evaluated. They supersede both temporary and proposed regulations. A final regulation is effective the day it is published in the Federal Register as a Treasury Decision, unless otherwise stated.

4.10.7.2.3.4 (05-14-1999)
Authority of the Regulations

1. The Service is bound by the regulations. The courts are not.
2. If both temporary and proposed regulations have been issued on the same Code section and the text of both are similar, examiners' positions should be based on the temporary regulations because it can be cited as an authority for proposing an adjustment.
3. When no temporary or final regulations have been issued, examiners may use a proposed regulation to support a position. Indicate that the proposed regulation has no authoritative weight, but is the best interpretation of the Code section available.

4.10.7.2.3.5 (05-14-1999)
Publication of the Regulations

1. Regulations are printed in the following publications:
   A. Federal Register
   B. Code of Federal Regulations (CFR)
   C. Under the heading "Treasury Decisions" (T.D.) in the Internal Revenue Bulletins (I.R.B.) and the Cumulative Bulletin (C.B.)
   D. Tax services of commercial publishers, such as CCH Incorporated and Research Institute of America.

4.10.7.2.3.6 (05-14-1999)
Citing the Regulations

1. The citation for a regulation contains three basic organizational units:
   A. The part number,
   B. The Code section number, and
   C. The regulation section number.
2. Treasury Regulation § 1.61-9(c) is illustrated below:

Figure 4.10.7-2

   A. The first division is the CFR part number and indicates the subject of the regulation. The part number appears before the decimal point in a citation. In the citation Treas. Req. § 1.61-9(c), the number 1 refers to Part 1 of the CFR, which is income tax. If the regulation were on employment taxes, the number 31 would precede the decimal point.
   B. The numbers immediately after the decimal point refer to the Code section to which the regulations apply. In the citation Treas. Reg. § 1.61-9(c), the number 61 refers to IRC § 61. The regulations are sequenced by Code section numbers. For example, Treas. Reg. § 31.6051 comes before § 31.6052 but after § 301.6047.
   C. The section number of the regulation is separated from the Code section by a hyphen. Again, using the citation Treas. Reg. § 1.61-9(c), the number 9 is the regulation section number and (c) is the subsection.
3. References to regulations sections do not correspond to Code sections.

4.10.7.2.3.7 (05-14-1999)
Outdated Regulations

1. Regulations may only apply to a particular time period. This fact is sometimes reflected by the publisher in the paragraph heading. Regulations do not always reflect recent changes in the law and may not be applicable to years following a change in the law. Look for disclaimers and cautions regarding time frames.

4.10.7.2.3.8 (05-14-1999)
Financial Record-Keeping Regulations

1. Financial Recordkeeping Regulations are issued by the Treasury Department under authority of the Federal Deposit Insurance Act, 12 U.S.C. 1829b, §§ 1951-1959, and the Currency and Foreign Transactions Reporting Act, 31 U.S.C. §§ 103.11-103.53. The regulations specify the financial reports and records to be kept and/or filed by those engaged in domestic and foreign currency transactions.

4.10.7.2.4 (05-14-1999)
Internal Revenue Bulletin

1. The Internal Revenue Bulletin (I.R.B.) is the authoritative instrument of the Commissioner of Internal Revenue for announcing official IRS rulings and procedures and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published on a weekly basis by the Government Printing Office.
2. It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin . All published rulings apply retroactively unless otherwise indicated. Procedures relating

solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

4.10.7.2.4.1 (05-14-1999)
Miscellaneous Documents

1. In addition to Revenue Rulings and Revenue Procedures, a number of miscellaneous documents having application to tax law interpretation and Documents administration are published in the Bulletin .
   A. Announcements – Announcements are public pronouncements on matters of general interest, such as effective dates of temporary regulations, clarification of rulings and form instructions. They are issued when guidance of a substantive or procedural nature is needed quickly. Announcements can be relied on to the same extent as Revenue Rulings and Revenue Procedures when they include specific language to that effect. Announcements are not included in the bound Cumulative Bulletin . They are identified by a two digit number representing the year and a sequence number, for example, Announcement 96-124, 1996-49 I.R.B. 22. This announcement is found in Internal Revenue Bulletin No. 1996-49, issued December 2, 1996, at page 22.
   B. Notices – Notices are public announcements issued by the Internal Revenue Service. Notices appear in the Internal Revenue Bulletin and are included in the bound Cumulative Bulletin . Notices are identified by a two digit number representing the year and a sequence number. For example, Notice 95-67 is cited as Notice 95-67, 1995-52 I.R.B. 35 or Notice 95-67, 1995-2 C.B. 343. (The Cumulative Bulletin is the more permanent bound volume and citing the Cumulative Bulletin is more appropriate after its publication.)
   C. Delegation Orders – Commissioner Delegation Orders (Del. Order) formally delegate authority to perform certain tasks or make certain decisions to specified Service employees. Agreements made by Service employees under these orders are binding on taxpayers and the Internal Revenue Service. Delegation Orders are identified by a number, sometimes followed by a revision date. Delegation Orders appear in the Internal Revenue Bulletin and are included in the Cumulative Bulletin . For example, Delegation Order No. 245 is cited as Del. Order 245, 1995-22 I.R.B. 5 or Del. Order 245, 1995-1 C.B. 288. (The Cumulative Bulletin is the more permanent bound volume and citing the Cumulative Bulletin is more appropriate after its publication.)

4.10.7.2.4.2 (05-14-1999)
Citing the Internal Revenue Bulletin

1. Items appearing in the Internal Revenue Bulletin that have not appeared in the Cumulative Bulletin should be cited to the weekly Bulletin as follows, Rev. Rul. 96-55, 1996-49 I.R.B. 4. Internal Revenue Bulletin No. 1996-49 was issued December 2, 1996. Revenue Ruling 96-55 is found at page 4.

4.10.7.2.5 (05-14-1999)
Cumulative Bulletin

1. The Cumulative Bulletin (C.B.) is a consolidation of items of a permanent nature published in the weekly Internal Revenue Bulletin . The Cumulative Bulletin is issued on a semiannual basis. The Bulletin is numbered 1 to 5, inclusive (April 1919 to

December 31, 1921); and I-1 and I-2 to XV-1 and XV-2, inclusive (January 1, 1922, to December 31, 1936) . Each Cumulative Bulletin number thereafter bears the particular year covered, for example, 1963-1 (January 1 to June 30, 1963).

2. The Cumulative Bulletin is divided into four parts:
   A. Part I, 1986 Code: This part is divided into two subparts based on provisions of the Internal Revenue Code of 1986. Arrangement is sequential according to Code and regulations sections. The Code section is shown at the top of each page.
   B. Part II, Treaties and Tax Legislation: This part is divided into two subparts as follows: (1) Subpart A, Tax Conventions, and (2) Subpart B, Legislation and Related Committee Reports.
   C. Part III, Administrative, Procedural, and Miscellaneous: To the extent practical, pertinent cross references to these subjects are contained in the other parts and subparts.
   D. Part IV, Notice of Proposed Rule Making: The preambles and text of Proposed Regulations that were published in the Federal Register during this six month period are printed in this section. Included in this section is a list of persons disbarred or suspended from practice before the Internal Revenue Service.

4.10.7.2.5.1 (05-14-1999)
Citing the Cumulative Bulletin

1. The title of Cumulative Bulletins issued before 1937 does not reflect the year of issuance. A citation to the Bulletin must include the year in parentheses at the end of the citation, as follows: S.S.T. 31, XV-2 C.B. 400 (1936).
2. After 1936, a citation to the Bulletin is as follows: Rev. Proc. 71-4, 1971-1 C.B. 662. Revenue Procedure 71-4 is found at page 662, volume one of the 1971 Cumulative Bulletins (January - June, 1971).
3. To call attention to a certain page of a document, such as the Bulletin , show first the page on which the document begins followed by the page to which attention is directed. Thus, the citation Rev. Rul. 63-107, 1963-1 C.B. 71, 74, directs the reader's attention to page 74 of Rev. Rul. 63-107 found in volume 63-1 of the Cumulative Bulletin , starting on page 71.

4.10.7.2.6 (05-14-1999)
Revenue Rulings and Procedures

1. Revenue Rulings (Rev. Rul.) represent the conclusions of the Service on the application of the law to specific facts stated in the ruling. In rulings based on positions taken in private letter rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.
2. A revenue procedure (Rev. Proc.) is issued to assist taxpayers in complying with procedural issues that deal with tax return preparation and compliance.
3. The purpose of rulings and procedures is to promote uniform application of the tax laws. Internal Revenue Service employees must follow rulings and procedures. Taxpayers may rely on them or appeal their position to the Tax Court or other Federal courts.
4. Revenue Rulings and Revenue Procedures that have an effect on previous rulings use the following defined terms to describe the effect:
   A. Amplified describes a situation where no change is being made in a prior

published position, but the prior position is being extended to apply to a variation of the original fact situation.

B. Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, confusion. It is not used where a position in a prior ruling is being changed.

C. Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

D. Modified is used where the substance of a previously published position is being changed.

E. Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. The term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

F. Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

G. Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings) . Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desirable to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and superseded describes a situation where the substance of previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

H. Supplemented is used in situations in which a list, such as a list of the name of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

I. Suspended is used in rare situations to show that the previously published ruling will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

4.10.7.2.6.1 (05-14-1999)
Authority of Rulings and Procedures

1. Rulings do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings, the effects of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Caution is urged against reaching the same conclusion in other cases, unless the facts and circumstances are substantially the same.

4.10.7.2.6.2 (05-14-1999)
Publication of Rulings and Procedures

1. Revenue Rulings and Procedures are published by the Internal Revenue Service in the Internal Revenue Bulletin .

4.10.7.2.6.3 (05-14-1999)
Citing Rulings and Procedures

1. Locating a ruling or procedure requires the following information from the citation:
   A. The year the ruling or procedure was issued,
   B. The ruling or procedure number,
   C. The volume number of the I.R.B. or C.B.,
   D. The page number of the Ruling or Procedure.
2. Rev. Rul. 76-12, 1976-2 C.B. 88, is illustrated below:

Figure 4.10.7-3

4.10.7.2.7 (05-14-1999)
Bulletin Index-Digest System

1. The Bulletin Index-Digest System provides a way to quickly research Revenue Rulings, Revenue Procedures, Public Laws, Treasury Decisions, and other matters of a permanent nature published since 1952 in the Internal Revenue Bulletin or Cumulative Bulletin . The Index-Digest is published by the Government Printing Office. It is a comprehensive, up-to-date research tool and consists of four Services:
   A. Service No. 1, Income tax (Publication 641);
   B. Service No. 2, Estate and Gift Tax (Publication 642);
   C. Service No. 3, Employment Tax (Publication 643);
   D. Service No. 4, Excise Taxes (Publication 644);
2. Each Service consists of a basic volume and cumulative supplements that provide (1) finding lists of items published in the Bulletin , (2) digests of Revenue Rulings, Revenue Procedures, and other published items, and (3) indexes of Public Laws, Treasury Decisions, and Tax Conventions.

4.10.7.2.8 (05-14-1999)
IRS Publications

1. IRS Publications, issued by the Headquarters Office, explain the law in plain language for taxpayers and their advisors. They typically highlight changes in the law, provide examples illustrating Service positions, and include worksheets. Publications are nonbinding on the Service and do not necessarily cover all positions for a given issue. While a good source of general information, publications should not be cited to sustain a position.

4.10.7.2.9 (05-14-1999)
Court Decisions and Case Law

1. Congress legislates tax law, the Internal Revenue Service interprets and enforces the law, and the judiciary branch of government determines whether the Service's interpretation is correct. This provides for yet another source of guidance as to the meaning of tax laws (court decisions) sometimes referred to as case law.
2. This section focuses on the Federal courts (and their predecessors) that interpret Federal tax law, and the role of case law in tax research and decision making. This section includes the following subsections:

4.10.7.2.9.1 (05-14-1999)
U.S. Board of Tax Appeals

1. Until superseded by the U.S. Tax Court in 1942, the Board of Tax Appeals (B.T.A.) offered taxpayers a prepayment forum for disputing deficiencies assessed by the Service. The Board had jurisdiction over income, excess profits, and estate and gift taxes.
2. Although these decisions are old, many retain precedential value because they address issues of continuing significance or state principles that are still valid. However, a B.T.A. decision may be based upon an authority that is obsolete and all references to the Code are to a pre-1954 Code. Therefore, caution must be exercised in citing B.T.A. decisions.
3. Board of Tax Appeals Decisions are cited as follows: Simons Brick Co. v. Commissioner is cited 14 B.T.A. 878 where "14" is the volume number, "B.T.A." is the publication title, and "878" is the page number. These decisions are available from commercial publishers.

4.10.7.2.9.2 (05-14-1999)
Tax Court of the United States

1. When taxpayers disagree with a determination and the case is not settled through the Appeals process, taxpayers may petition the United States Tax Court for a judicial determination of tax liability before paying the tax. Tax Court offers taxpayers a forum for disputing deficiencies asserted by the Service under income, estate and gift tax, and certain (not all) employment tax and excise tax provisions.

4.10.7.2.9.2.1 (05-14-1999)
Small Tax Case Procedures

1. Tax Court cases involving not more than $50,000 for any one year may be handled under the "small tax case procedures" . These procedures were authorized in order to expeditiously and informally handle litigation for cases involving small sums of money. When taxpayers choose this route to appeal a decision, they are barred from making an appeal to a higher court. Decisions reached by the Tax Court under the small case procedures are not published and have no precedential value.

4.10.7.2.9.2.2 (05-14-1999)
Regular Opinions

1. Tax Court regular opinions are decisions of the Court that involve more than mere factual determinations or applications of well established legal principles. They generally involve new decisions on points of law that set precedents. Regular opinions

are published in Reports of the United States Tax Court by the Government Printing Office. Commercial publishers also print these decisions.

4.10.7.2.9.2.3 (05-14-1999)
Memorandum Decisions

1. Memorandum decisions primarily involve factual determinations and the application of well-established legal rules. Memorandum decisions do not warrant publication in bound volumes in the opinion of the Court. They are published in pamphlets by the Government and in bound volumes by commercial publishers.

4.10.7.2.9.2.4 (05-14-1999)
Citing Tax Court Decisions

1. In citing a regular decision of the United States Tax Court, examiners should name the case, refer to the number of the volume in which it is published, and the page in the volume on which the ruling begins. For example: Richard A. Sutter , 21 T.C. 170.
2. Examiners should be careful not to cite a Tax Court case in which the decision was against the Government unless that decision has been acquiesced by the Commissioner (see 7.2.9.8.1(4)). If the decision was against the Commissioner and acquiescence followed, the decision must be noted as "Acq" . A decision against the Government which has been nonacquiesced in should be noted as "Nonacq" .
3. Memorandum decisions are usually cited with reference to one or both of two commercial publications. For example: R.L. Taylor v. Commissioner may be cited as follows:
    A. CCH, Incorporated: Taylor, R.L. 40 T.C.M. 1206 1980-376 Dec. 37,228(M)
    B. Research Institute of America: Taylor, R.L. 1980 T.C. Memo 80376
4. Some of the information is the same in each citation, such as the case name and decision number (1980-376 and 80376, respectively). However, reference to where the decision is found is different and the CCH citation includes a CCH decision number, Dec. 37,228(M).
5. The term "v. Commissioner" is not used in citing United States Tax Court cases.

4.10.7.2.9.3 (05-14-1999)
U.S. District Court and U.S. Court of Federal Claims

1. Generally, the United States District Court and the United States Court of Federal Claims hear tax cases after the taxpayer has paid the tax and filed a claim for refund or credit. If the claim is denied by the Service, the taxpayer may petition either the District Court or the Court of Federal Claims. District Court decisions may be appealed to the Courts of Appeals for the appropriate circuit. The Supreme Court of the United States may, at its discretion, review decisions of a Court of Appeals or the Court of Federal Claims.

4.10.7.2.9.3.1 (05-14-1999)
District Courts

1. United States District Courts are the primary Federal courts of original jurisdiction and are located across the United States and its possessions. This is the only court where taxpayers can request a jury trial.
2. Decisions of District Courts are published by commercial publishing houses. Examples are:
    A. CCH Incorporated: United States Tax Cases (cited USTC)

B. Research Institute of America: American Federal Tax Report (cited AFTR)
C. West publishing Company: Federal Reports (cited F. 2d)

(NOTE: West Publishing Company publishes all decisions; CCH and Research Institute publish only Federal tax decisions.)

3. Citing District Court decisions is demonstrated below for the case of Ruby Smith Stahl v. United States .
   A. CCH Incorporated: 69-1 USTC 9179
   B. Research Institute: 23 AFTR 2d 69-563
   C. West Publishing: 294 F. Supp 243 (D.D.C. 1969)
4. If a case has been decided but not yet cited to an unofficial reporter, cite as follows: Gifford Corp. v. United States , Civil No. 73-1250 (D. Mass., Jan. 10, 1973).
5. If a case has not been decided, cite as follows: Cowden Mfg. Co. v. United States , Docket No. 2227 (E.D. Ky. , filed April 17, 1972).

4.10.7.2.9.3.2 (05-14-1999)
U.S. Court of Federal Claims

1. The United States Claims Court, subsequently renamed United States Court of Federal Claims, is located in Washington, D.C., and was established on October 1, 1982. It is authorized to sit nationwide. Prior to October 1, 1982, taxpayers could petition the United States Court of Claims. When researching tax issues, examiners will find cases from both courts.
2. Decisions of the Claims Court are published by commercial publishers:
   A. CCH Incorporated: United States Tax Cases (cited USTC)
   B. Research Institute of America: American Federal Tax Report (cited AFTR)
   C. West Publishing Company: Federal Reports, Second Series (cited F. 2d) and beginning October 1982, Claims Court Reporter (cited Cl. Ct.)
3. Citing United States Court of Claims is demonstrated below for the case of Uptown Club of Manhattan, Inc. v. United States .
   A. CCH Incorporated: 49-1 USTC 9261
   B. Research Institute: 37 AFTR 1316
   C. West Publishing: 83 F. Supp. 823 (Ct. Cl. 1949)
4. Citing a Claims Court decision is demonstrated below for the case of Recchie v. United States .
   A. CCH Incorporated: 83-1 USTC 9312
   B. Research Institute: 51 AFTR 2d 83-1010
   C. West Publishing: 1 Cl. Ct. 726

4.10.7.2.9.4 (05-14-1999)
Court of Appeals

1. Either the taxpayer or the Government may appeal decisions of the Tax Court and District Courts to the regional Circuit Court of Appeals. There are twelve courts of appeals for eleven circuits and the District of Columbia.
2. District Courts must follow the decision of the Court of Appeals for the circuit in which they are located. For example, the District Court in the Eastern District of Missouri must follow the decision of the Eight Circuit. If the Eighth Circuit has not rendered a decision on the particular issue involved, then the District Court may make its own decision or follow the decision of another circuit which has rendered a decision on the issue.
3. Since one circuit court is not bound by the decision of another circuit, it is important to

find a case from the circuit that will hear the case when citing a case supporting the position taken on an issue. If a decision on a particular issue has not been rendered in the examiner's circuit, cite a supporting decision rendered in another circuit.

4. Decisions of the Court of Appeals and U.S. Court of Appeals for the Federal Circuit are published by commercial publishers in the following volumes:
   A. CCH Incorporated: United States Tax Cases (cited USTC)
   B. Research Institute of America: American Federal Tax Report (cited AFTR)
   C. West Publishing Company: Federal Reports, Second Series (cited F. 2d)
5. Citing United States Courts of Appeals decisions:
   A. Example: In the case of Graham v. Commissioner , the citation is 6 F.2d 878 (4th Cir. 1964).
   B. If a case has not been reported in Federal Reports , cite an unofficial reporter, as follows: Marwais Steel Co. v. Commissioner , 17 AFTR 2d 11 (9th Cir. 1965), or Marwais Steel Co. v. Commissioner , 66-1 USTC 85, 126 (9TH Cir. 1965).

4.10.7.2.9.5 (05-14-1999)
U.S. Court of Appeals for the Federal Court

1. Before October 1, 1982, taxpayers appealed Court of Claims Decisions directly to the Supreme Court. A new appellate court, the United States for the Court of Appeals for the Federal Circuit, was established. Taxpayers who disagree with a decision of the United States Court of Federal Claims must make their appeal to the Court of Appeals for the Federal Circuit.
2. Exhibit 4.2.7-1 shows the jurisdiction of the circuits of the Court of Appeals.

4.10.7.2.9.6 (05-14-1999)
Supreme Court

1. Decisions of the U.S. Courts of Appeal and the U.S. Court of Appeals for the Federal Circuit Court may be appealed to the United States Supreme Court. The Supreme Court of the United States is the highest court of the land. No one has a right to be heard by the Court; the Supreme Court only accepts cases which it views as having national importance. Only a limited number of tax cases are heard.
2. Appeal to the Supreme Court of the United States is by Writ of Certiorari . If the Court accepts the petition, it will grant the writ, cited cert. granted . If the petition is denied, the case is cited cert. denied .
3. Supreme Court decisions are published by the Internal Revenue Service in the Internal Revenue Bulletin and Cumulative Bulletin . Commercial publishers as well as the Government Printing Office print the Court's decisions:
   A. CCH Incorporated: United States Tax Cases (cited USTC)
   B. Research Institute of America: American Federal Tax Report (cited AFTR)
   C. West Publishing Company: Supreme Court Reporter (cited S. Ct.)
   D. United States Law Week (cited U.S.L.W).
   E. Government Printing Office: United States Reports (cited U.S.)
4. Citing Supreme Court cases is demonstrated below for the case of Commissioner v. Neil Sullivan :
   A. CCH Incorporated: 58-1 USTC 9368
   B. Research Institute of America: 1 AFTR 2d 1158
   C. West Publishing Company: 78 5. Ct. 512
   D. United States Reports : 356 U.S. 27 (1958)

E. Cumulative Bulletin : 1958-1 C.B. 506

4.10.7.2.9.7 (05-14-1999)
Citators: Researching Case History

1. Knowledge of the judicial history of a tax case is important and research of case law is not complete until the history of a case is reviewed in a citator. For example, examiners should consider whether a case is current, whether there are other cases on the same point of law that should be considered, or whether a ruling is still valid. A citator lists court decisions alphabetically by case name and shows where the full text of the decisions may be found. The citator traces the case history from its original entry into the court system through the Supreme Court, if appealed.
2. Decisions reached in a lower court are sometimes reversed in the Appellate or Supreme Court. When this happens, the lower case decision has no legal sanction and should not be cited as an authority. A citator will show whether a higher court reversed, affirmed, modified, or otherwise disposed of a lower court decision.
3. Revenue Rulings and Procedures may be revoked, modified, amplified, etc. A citator findings list will indicate whether or not this is the case.
4. A citator will also direct examiners to subsequent cases or rulings that deal with the same legal principle in the setting of other Code sections or fact patterns. It lists everything that has been said about a case, ruling, or procedure.
5. Citators are published by commercial publishers of tax services such as CCH Incorporated and Research Institute of America. While formats differ, commercial citators provide basically the same information.

4.10.7.2.9.7.1 (05-14-1999)
Citator Examples

1. The following examples are taken from the Main Citator Table of CCH Incorporated's Standard Federal Tax Reporter on compact disc.
2. Example 1: Case Citator
   A. **Batman, Ray L.** ANNOTATED AT . . . 96 FED 2250.66; 8586.0358; 8706.075; 8706.11; 11, 025.3801; 13, 709.2261; 25,424 .95
   B. **SCt** – Cert. denied, 342 US 877; 72 SCt 167
   C. **CA-5** – (aff'g TC), 51-1 USTC P9305; 189 F2d 107
   D. Miller, CA-10, 61-1 USTC 9156, 285 F2d 843
      Finley, CA-10, 58-1 USTC 9517, 255 F2d 128
      Batman, CA-5, 57-1 USTC 9247, 239 F2d 283
      Christopher, CA-5, 55-1 USTC 9504, 223 F2d 124
      West, CA-5, 54-2 USTC 9480, 214 F2d 300
      Wofford, CA-5, 53-2 USTC 9637, 207 F2d 749
      Mauritz, CA-5, 53-2 USTC 9495, 206 F2d 135
      Tomlinson, CA-5, 52-2 USTC 9543, 199 F2d 674
      Seabrook, CA-5, 52-1 USTC 9294, 196 F2d 322
      Culbertson, Sr., CA-5, 52-1 USTC 9233, 194 F2d 581
      Alexander, CA-5, 52-1 USTC 9232, 194 F2d 921
      Tilden, Inc., CA-5, 51-2 USTC 9501, 192 F2d 704
      Britt Est., CA-5, 51-2 USTC 9414, 190 F2d 946
      Scott, DC – Ark, 53-1 USTC 9166, 110 FSupp 165
      Lewis, TC, Dec. 20,733, 23 TC 538
      West, TC, Dec. 19,435, 19 TC 808

Tomlinson, TC, Dec. 18,513(M), 10 TCM 828
E. **TC** – Dec. 17,553(M); 9 TCM 210

3. Explanations of the above citations are as follows:
   A. Case name (Batman, Ray L.) and paragraph references to CCH Federal Standard Tax Reporter.
   B. Batman was appealed to the Supreme Court; however, certiorari was denied.
   C. Fifth Circuit Court of Appeals heard Batman and affirmed the Tax Court Decision.
   D. These cases deal with the same legal principle or fact pattern and cite Batman .
   E. Tax Court heard Batman and case was appealed to Fifth Circuit Court of Appeals.
4. Example 2: Rulings Finding List
   A. **Rev. Proc. 75-25, 1975-1 CB 720** ANNOTATED AT ...96 FED 8471.90; 29,663.90 1975 CCH 6595
   B. **Amplified by:** Rev. Proc. 78-25
   C. **Cited in:** Jones, Dec. 49,862(M), 67 TCM 2997, TC Memo. 1994-230 Notice 91-4 T.D. 8408 Haynsworth, TC, Dec. 34,581, 68 TC 703 Rev. Rul. 76-247
   D. **Obsoleted by:** Rev. Proc. 92-29
   E. **Superseding:** Mim. 4027
   F. Example 2 is self-explanatory.

4.10.7.2.9.8 (05-14-1999)
Importance of Court Decisions

1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.
2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.
3. Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.

4.10.7.2.9.8.1 (05-14-1999)
Action on Decision

1. It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision (A.O.D.) is the document making such an announcement. An Action on Decision is issued at the discretion of the Service only on unappealed issues, decided adverse to the government. Generally, an Action on Decision is issued where guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.
2. An Action on Decision may be relied upon within the Service only as the conclusion, applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the

Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

3. Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service may acquiesce or nonacquiese in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin .
4. The recommendation in every Action on Decision is summarized as acquiescence, in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. The following differences are noted:
   A. "Acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions.
   B. "Acquiescence in result only" indicates disagreement or concern with some or all of those reasons.
   C. Nonacquiescence signifies that, although no further review was sought, the Service does not agree with the holding of the court and generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

4.10.7.2.9.8.2 (05-14-1999)
Publication of Action On Decisions

1. Action on Decisions are published in the weekly Internal Revenue Bulletin and consolidated semiannually. The consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year. The annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

4.10.7.2.9.8.3 (05-14-1999)
Citing Actions on Decisions

1. If the Commissioner has published an acquiescence, acquiescence in result only, or nonacquiescence in a Tax Court or Board of Tax Appeals decision, it must be included in the citation, as in the following examples:
   A. Merle P. Brooks , 36 T.C. 1128 (1961), acq., 1962-2 C.B. 4.
   B. Rodney Horton , 13 T.C. 143 (1949), acq. in result, 1959-2 C.B. 5.
   C. Forest Lawn Memorial Park Ass'n. , 45 B.T.A. 1091 (1941), nonacq. 1960 -2 C.B.

4.10.7.2.10 (05-14-1999)
Private Letter Rulings and Technical Advice Memorandums

1. A Private Letter Ruling (PLR) represents the conclusion of the Service for an individual

taxpayer. The application of a private letter ruling should therefore be confined to the specific case for which it was issued, unless the issue involved was specifically covered by statute, regulations, ruling, opinion, or decision published in the Internal Revenue Bulletin .

2. Technical Advice Memorandums (TAM) are requested by IRS area offices after a return has been filed, often in conjunction with an ongoing examination. TAMs are binding on the Service in relation to the taxpayer who is the subject of the ruling.
3. A private letter ruling to a taxpayer or a technical advice memorandum to an area director, which relates to a particular case, should not be applied or relied upon as a precedent in the disposition of other cases. However, they provide insight with regard to the Service's position on the law and serve as a guide.
4. Existing private letter rulings and memorandums (including Confidential Unpublished Rulings (C.U.R.), Advisory Memorandums (A.M.), and General Counsel Memorandums (G.C.M.)) may not be used as precedents in the disposition of other cases but may be used as a guide with other research material in formulating a area office position on an issue.
5. Whenever an area office finds that a C.U.R., A.M., or G.C.M. represents the sole precedent or guide for determining the disposition of an issue and cannot to its own satisfaction find justification in the Code, regulations, or published rulings to support the indicated position, technical advice should be requested from the Headquarters Office.
6. Technical advice should be requested where taxpayers or their representatives take the position that the basis for the proposed action is not supported by statute, regulations, or published positions of the Service. If it is believed that the position of the Service should be published, the request for technical advice will contain a statement to that effect. Instructions for requesting technical advice from the Headquarters Office are contained in the second revenue procedure issued each year. Questions regarding the procedures should be addressed to the functional contacts listed in the revenue procedure.

4.10.7.2.10.1 (05-14-1999)
Publication of PLRs and TAMs

1. Letter rulings and technical advice memorandums are available from commercial publishers.

4.10.7.2.10.2 (05-14-1999)
Citing PLRs and TAMs

1. Letter rulings and technical advice memorandums are cited PLR or TAM, respectively, followed by a seven digit number. For example, PLR 8210019 or TAM 9643001. The first two digits indicate the year the ruling was published, for example, 1982 and 1996, respectively.

4.10.7.2.11 (05-14-1999)
General Counsel Memorandums

1. General Counsel Memorandums (GCM) are legal memorandums from the Office of Chief Counsel prepared in connection with the review of certain proposed rulings (Rev. Ruls., PLRs, TCMs) . They contains legal analyses of substantive issues and can be helpful in understanding the reasoning behind a particular ruling and the Service's response to similar issues in the future.

4.10.7.2.12 (05-14-1999)

Technical Memorandums

1. Technical Memorandums (TM) function as transmittal documents for Treasury Decisions or Notices of Proposed Rule Making (NPRMs) . They generally summarize or explain proposed or adopted regulations, provide background information, state the issues involved, and identify any controversial legal or policy questions. Technical Memorandums are helpful in tracing the history and rationale behind a regulation or regulation proposal.

4.10.7.2.13 (05-14-1999)
Engineering Citator

1. The Engineering Citator, Document 5262, contains annotations (short summaries of cases and rulings) and citations of precedents and published tax law developments pertinent to administering Internal Revenue Code provisions involving engineering matters.
2. Copies of the Citator and supplements are distributed to Service personnel most concerned with engineering issues.

4.10.7.2.14 (05-14-1999)
Other Research Sources

1. A wide range of tax literature is available to Service personnel. Monthly publications such as The Journal of Taxation , Taxation for Accountants , and Taxation for Lawyers , published by Warren, Gorham & Lamont, include articles pertaining to Federal tax matters.
2. Numerous books presenting detailed analyses of tax laws and issues are available and provide excellent sources of information. One of the better known is Federal Income Taxation of Corporations and Shareholders by Bittker and Eustice, published by Warren, Gorham & Lamont, which has been cited by the Supreme Court.
3. A number of tax services are available from commercial publishers that provide explanations and annotations on a variety of tax issues. Well known examples include CCH Incorporated's Standard Federal Tax Reporter , Bureau of National Affairs' Tax Management Portfolios , and Research Institute of America's American Federal Tax Reports .
4. Although these services may not be available in office libraries, they may be available through other library systems, i.e., public libraries or universities.

4.10.7.2.15 (05-14-1999)
Electronic Tax Research

1. Electronic tax research using computers, compact discs, and on-line tax services is also available. Information can be accessed quickly and all references to a given topic, obtained by searching, by specific words or word groups. Most of the documents discussed above are available from commercial vendors on compact disc or online.

4.10.7.2.15.1 (05-14-1999)
LEXIS

1. One example of research available to employees is LEXIS-NEXIS. "LEXIS" is a commercial vendor who supplies electronic access to data bases that contain extensive libraries from which legal research material can be retrieved in full text through research terminals.
2. Research terminals can retrieve, read, and make a copy of the complete text or any

portion of a document such as a Tax Court decision or Revenue Ruling. Most terminal responses are received in a matter of seconds.
3. Information is retrieved by means of a search request. A search request consists of two elements–the search terms and the search logic. Search terms are words or phrases. Search logic is the manner in which the terms are treated in relation to one another. A LEXIS desk reference explains the mechanics and logic formulation of search requests. All words, except about 100 common ones, are searchable in any document in the libraries.
4. Employees who receive LEXIS or other electronic research training receive User-ID cards with personal identification numbers enabling them to use the service. (User ID cards may also be obtained for employees who have not had formal LEXIS training.)
5. Employees should consult their local Electronic Research coordinator for additional details concerning use of LEXIS and other research services in their area.

4.10.7.2.15.2 (05-14-1999)
NEXIS

1. "NEXIS" provides access to electronic data bases that includes many of the major newspapers, magazines, news wires, and reference works. This service is normally available through LEXIS terminals. NEXIS is not generally available. Examiners should consult their area coordinator for further information.

4.10.7.2.15.3 (05-14-1999)
Compliance Automated Research Tools System (CARTS)

1. A national information system, Corporate Automated Research Tools System (CARTS), is available to Service employees. The system can be accessed from the Information Systems (IS) Support Bulletin System (BBS) . CARTS contains tools such as the Internal Revenue Manual, Market Segment Specialization Program (MSSP) Guides, Examining Officer's Guide (EOG) and technical newsletters/alerts. It utilizes Textware search software. Access to CARTS can be obtained through local management.

4.10.7.2.15.4 (05-14-1999)
Examination Specialization Bulletin Board

1. The Examinationt Specialization (ES) is an area program in which compliance is addressed on a market segment basis. ES facilitates the development of examiner expertise and includes national audit technique guides for various market segments.
2. The Headquarters Office ES staff maintains the national ES bulletin board. The bulletin board has sections containing summaries of ES projects nationwide, audit technique guide user notes, audit technique guides, and ISP information. Examiners should contact the area ES Coordinator if direct access to the bulletin board is not available.
3. The ES bulletin board also includes a forum that can be used to seek advice on an issue or share a solution. The forum is like E-Mail except messages can be viewed by all users.

4.10.7.2.15.5 (05-14-1999)
Industry Specialization Program

1. The Industry Specialization Program (ISP) is a national program with a national coordinator for each represented industry.
2. ISP includes industries such as Aerospace, Construction/Real Estate, Health, and

Petroleum and issue specialities such as Changes in Methods of Accounting, Passive Activity Losses, and Uniform Capitalization (Section 263A) . Complete listings can be obtained from the Area Industry Specialization Technical Coordinators (AISTC).

3. The ISP specialists also publish coordinated issue papers and/or quarterly digests on their industry or issue. These papers/digests can be helpful in identifying and developing issues.

4.10.7.3 (05-14-1999)
Evaluating Evidence

1. Examiners gather facts to correctly determine a taxpayer's tax liability. This determination must be made on the basis of all available facts, including facts supporting the taxpayer's position. For this reason, examiners should determine all the facts supporting both sides of an issue.
2. Examiners should pursue an examination to a point where a reasonable determination of the correct tax liability can be made. In the daily application of this responsibility, examiners must deal with problems of evidence and its evaluation. The following discussion is presented as a series of definitions and explanations to assist examiners in determining the nature and sustaining value of various types of evidence.

4.10.7.3.1 (05-14-1999)
Evidence Defined

1. Evidence is something which tends to prove a fact or point in question. Evidence is distinguished from proof, in that proof is the result or effect of evidence.

4.10.7.3.2 (05-14-1999)
Oral Testimony

1. The Internal Revenue Code requires all taxpayers to keep adequate records. There are times, due to unusual circumstances, when records do not exist. In such cases, oral testimony may be the only evidence available. Therefore, oral statements made by taxpayers to examiners represent direct evidence which must be thoroughly considered. Although self-serving, uncontradicted statements which are not improbable or unreasonable should not be disregarded. The degree of reliability placed on a taxpayer's oral statements must be based on the credibility of the taxpayer and surrounding circumstantial evidence (7.3.10 below) . The following general guidelines should also be considered:
    A. Oral evidence should not be used in lieu of available documentary evidence.
    B. If the issue involves specific recordkeeping required by law and regulations (e.g., IRC 274), then oral evidence (testimony) alone cannot be substituted for necessary written documentation.
    C. Oral testimony need not be accepted without further inquiry. If in doubt, attempts should be made to verify the facts from other sources of evidence.
2. A summary of a conversation or statement made by a taxpayer or witness should be prepared as documentation of the oral testimony and the taxpayer (or third party) should be requested to sign the document. It should always be signed by the examiner or examiners party to the interview. If the taxpayer or third party does not sign the documentation, then it is considered a report of the interview. This summary document should always contain:
    A. Date, time and place of contact,
    B. Name of the parties present, and

C. Description of what transpired.

3. Sometimes a more formal written statement is needed when documentation is not available and oral testimony will significantly affect the outcome of the case. In these cases examiners should assume that the case may eventually be resolved through litigation and should use formal written statements such as affidavits to record taxpayer or third party statements. An affidavit is an attested statement and has great validity when properly prepared and voluntarily given. Affidavits should be completed using Form 2311. Affidavits may be used:
   A. When other documentary evidence is unavailable,
   B. When the examiner wants the taxpayer's statements to become part of the case file,
   C. To help accumulate complete and accurate information.
   D. To record the testimony of a witness,and
   E. To prevent a taxpayer from changing testimony.
4. If oral testimony is accepted or where oral testimony is not allowed, the workpapers should reflect a full development of the facts, oral statements, corroborating evidence and conclusions, including an explanation of the factors supporting the conclusion. "Per oral testimony" or "as reasonable" are insufficient unless the amounts are both de minimis and reasonable.

4.10.7.3.3 (05-14-1999)
First Hand Knowledge

1. One of the basic rules of evidence is that witnesses (either taxpayers or third parties) can testify only about facts of which they have first hand knowledge. In other words, witnesses must be able to say the facts to which they testify are true.

4.10.7.3.4 (05-14-1999)
Expert Testimony

1. Some issues are so difficult that the ordinary person needs assistance from someone more familiar with the subject to understand and resolve the matter at hand. An expert opinion is made by someone with the education and experience to qualify as an expert. Thus, expert testimony is needed.
   NOTE:
   An examiner is not compelled to accept expert testimony; expert testimony can be challenged.

4.10.7.3.5 (05-14-1999)
Hearsay

1. Hearsay is what a witness says another person was heard to say. It is a secondary source of information and generally the reliability and trustworthiness of the evidence rests upon the veracity and reliability of a person giving testimony.
2. A common example of hearsay evidence is testimony of taxpayers' representatives. It should therefore be recorded in the workpapers by examiners. Hearsay often leads to primary sources of information.

4.10.7.3.6 (05-14-1999)
Admission Against Interest

1. A statement that is harmful to the person making the statement is considered an "admission against interest" . When an admission is made voluntarily and with

deliberation, it represents substantial evidence that the fact admitted is probably true.

2.

EXAMPLE:

If someone tells a friend that they shoot par golf, the friend may be skeptical. But if they said that they have trouble breaking 100, the friend might be inclined to believe them because it would be more likely.

4.10.7.3.7 (05-14-1999)
Opinions

1. An opinion is a belief not based on absolute certainty, or a judgment or evaluation of what seems to be true. Opinions are statements of personal feelings.
2. An opinion is not conclusive evidence of a fact. But opinions may be the only evidence available. Before accepting an opinion as evidence, make every effort to obtain other documentary evidence.
3. Opinions emphasize connotative meaning, that is, how someone feels about something; how they value it.
4. Opinions cannot be proven or verified. The only criterion for testing an opinion is whether it is acceptable or not, believed or not believed.
5. There are three primary types of opinions:
   A. Unqualified Opinion : An unqualified opinion is made by someone who is only guessing. The individual has neither the education or work experience to make an intelligent estimate.
   B. Biased Opinion : A biased opinion is made by someone whose relationship with the taxpayer influences the opinion. Suspect bias when a valuation or opinion is rendered by a family member or someone receiving a substantial benefit from the taxpayer.
   C. Expert Opinion : An expert opinion is made by someone with the education and experience to qualify as an expert, but biases, for example, family or employment relationships, should be considered. Any doubt about the validity of an expert's opinion should be resolved by seeking a second expert's opinion.

4.10.7.3.8 (05-14-1999)
Observations

1. Observations are statements, judgements, or inferences of fact based on something observed. It is the act of recognizing and noting a fact or occurrence.

4.10.7.3.9 (05-14-1999)
Documentary Evidence

1. Documents are another form of evidence. Documentary evidence is generally regarded as having great probative (providing proof or evidence) value. Writings made contemporaneously with the happening of an event generally reflect the actual facts and show what was in the minds of the parties to the event.
2. While documentary evidence has great value, it should not be relied on to the exclusion of other facts. Facts can also be established by oral testimony and there will be occasions when courts will give greater weight to oral testimony than to conflicting documentary evidence.

4.10.7.3.10 (05-14-1999)
Circumstantial Evidence

1. Circumstantial evidence is evidence from which more than one logical conclusion can be reached. To be useful, both the credibility of the evidence and the reasonableness of the conclusion should be evaluated.

4.10.7.3.11 (05-14-1999)
Best Evidence

1. The best evidence rule requires that, when possible, original evidence be used. Therefore, examiners should always ask to the see original documents when there is reason to believe such documents are available.

4.10.7.3.12 (05-14-1999)
Secondary Evidence

1. Secondary evidence is used when original evidence is unavailable. Examples of acceptable secondary evidence are copies of original documents made by an examiner. In the absence of original documents, copies made by the examiner become the best evidence available.

4.10.7.3.13 (05-14-1999)
Inferences

1. The fact in dispute can, in some cases, be proved by showing other facts from which the fact can be inferred. In other words, as a matter of logic, an inference can be made from facts to decide a disputed fact.
2. An inference is a logical conclusion based on facts. Things beyond the range of what can be observed are inferences.

4.10.7.4 (05-14-1999)
Arriving At Conclusions

1. After all the facts have been gathered through taxpayer interviews; examination of the books, records and supporting documents; interviews with third parties; and, having researched questionable items, the examiner has all the information to be considered in resolving the issues. At this point the examiner will use his/her professional judgement in considering all the information to arrive at a conclusion.
2. Examiners are expected to arrive at a definite conclusion by a balanced and impartial evaluation of all of the evidence. Examiners are given the authority to recommend the proper disposition of all identified issues, as well as any issues raised by the taxpayer.
3. Examiners will employ independent and objective judgment in reaching conclusions on issues being examined and in all aspects of their duties and will decide all matters on their merits, free from bias and conflicts of interest. Fairness will be demonstrated by:
   A. Making decisions impartially and objectively based on consistent application of procedural and the applicable tax law,
   B. Treating individuals equitably,
   C. Being open-minded and willing to seek out and consider all relevant information, including opposing perspectives,
   D. Voluntarily correcting mistakes and improprieties made by themselves or someone else in the Service and refusing to take unfair advantage of mistakes or ignorance of citizens, and
   E. Employing open, equitable, and impartial processes for gathering and evaluating information necessary to decisions.
4. Examiners will use their professional judgment in evaluating all evidence to reach a

conclusion. Examiners seldom have all of the information they would like to have to definitively resolve an issue. Examiners, therefore, must decide when they have enough, or substantially enough, information to make a proper determination for all issues under consideration. The sooner this point is reached, the more timely the case can be completed and the less burden will be placed on the taxpayer.

5. IRC 274(d) specifies recordkeeping rules that are required in certain situations. Treasury Regulations 1.274-5(c)(2)(v) states that it is permissible to allow a deduction without complete documentation if the taxpayer can show he or she has "substantially complied" with the adequate recordkeeping requirements. The examiner will use his/her skill and judgement in developing the surrounding evidence when less than the required documentation is available, so that the taxpayer is treated fairly, but does not profit from failure to keep records.
6. To determine if the taxpayer has "substantially complied," the following factors should be considered:
   A. Number and type of expenditures involved,
   B. Elements of documentation missing,
   C. Reason(s) the why deduction was not properly substantiated,
   D. Availability of other information to substantiate the expenditure
   E. Materiality of unsubstantiated items, and
   F. Relative tax significance of the items.
