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# ***What Happens to the Tax Return After It Is Filed?***

## **Procedure Before the Bureau of Internal Revenue and the Board of Tax Appeals**

**By R. P. HERTZOG\***

*Mid-Winter Legal Institute, Denver Bar Association,  
Denver, Colorado, January 24, 1941*

The Ides of March will soon be upon us again—this year with increased fury. March 15th has become a significant date in the lives of a vast number of the people of this country. Last year income tax returns were filed by approximately 9,000,000 taxpayers. This year that number will be substantially increased because of the lowered exemptions now in effect. Therefore, this is a particularly appropriate time for the consideration of my subject of this afternoon. Those of you who have, in the practice of your profession, specialized to some extent in tax matters are no doubt familiar in a general way with what happens to a tax return after it is filed, but I believe there is a lack of complete understanding by a large number of lawyers, as well as laymen, as to just what happens after a return is filed with the collector of internal revenue. I hope that this exposition will be of some value to all of those present.

I shall speak primarily of the income tax return which must be filed each year and which I believe is the return you are most vitally interested in. The procedure in estate and gift tax cases is substantially the same as in income tax cases. Since the adoption of the Sixteenth Amendment in 1913 giving Congress the power to levy taxes on income, the income tax has been the largest single source of Federal revenues. The total revenue collected during the last fiscal year ending June 30, 1940, was \$5,340,000,000, of which about 40 per cent represented income taxes. This figure exceeded the amount collected in each preceding year except the post-war year 1920. Needless to say, the amount collected this year and to be collected in succeeding years will necessarily be substantially increased. The task of collecting these vast sums and in administering the various revenue acts enacted by Congress, which now number fifteen since 1913, falls upon the Bureau of Internal Revenue. Before starting the trail of the tax return, it may be well to present a brief picture of the bureau for your better understanding of that trail and to emphasize the importance of the bureau's functions in our system of government. There are more than 22,000 employees in the bureau, all but 4,000 of

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\*Division Counsel, Western Division, Technical Staff, Bureau of Internal Revenue.

whom are in the field service. However, the cost of collecting the vast sum realized during the last fiscal year was only \$1.12 per hundred.

At the head of the Bureau of Internal Revenue, which is itself a part of the Treasury Department, stands the Commissioner of Internal Revenue, appointed by the President. Under the direction of the Secretary of the Treasury, the commissioner has "general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue" and has power to "prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue."

The bureau is divided into four main units, viz., the Income Tax Unit, the Miscellaneous Tax Unit, the Alcohol Tax Unit, and the Accounts and Collections Unit, each in charge of a deputy commissioner, and the Intelligence Unit. In addition, there is under the direct supervision of the commissioner the Technical Staff, which is the appellate agency of the bureau in tax controversies. The legal department of the bureau is the Chief Counsel's Office, which operates under the direction of a chief counsel, who is the legal advisor and representative of the commissioner and is under the general supervision of the general counsel of the Treasury Department.

The Income Tax Unit is charged with the administration of the internal revenue laws with reference to taxes on income, excess profits of corporations, excess profits on Navy and National Defense Act contracts, unjust enrichment tax, and refunds of certain processing taxes. The administration includes interpretative instructions and rulings regarding the provisions of the revenue laws relating to such taxes and the verification and adjustment of the returns through audits and field investigations for the purpose of securing the correct determination of tax liabilities as required by law. The auditing and investigative work of this unit is carried on by a vast corps of auditors, accountants and engineers, working for the most part under thirty-eight internal revenue agents in charge located at strategic cities throughout the country.

The Miscellaneous Tax Unit is concerned with the administration of all internal revenue taxes except income and excess-profits taxes, the taxes applicable to alcoholic beverages and those relating to employment. The taxes with which this division deals are estate and gift taxes, capital stock taxes, taxes on tobacco, stamp taxes, admission taxes and the excise taxes imposed on various products.

The Alcohol Tax Unit is charged with the administration and enforcement of the internal revenue liquor laws.

The Accounts and Collections Unit is the central administrative organization for the sixty-four internal revenue collection districts, each in charge of a collector of internal revenue, and makes the administrative audit of all expenditures for the internal revenue service.

The large number of taxpayers who are not in controversy over their tax liability probably know of only the office of Collector of Internal Revenue, for it is the collector with whom each taxpayer, no matter what the tax in question may be, files his tax return, and to him each taxpayer must pay his tax. Those who have differences with the bureau also know the collector well, for it is to him that all claims for refund or offers in compromise in the original instance are directed. It is he who makes demand for payment of tax, levies and distrains upon property in the event of failure of payment, and, under the commissioner's regulations, releases tax liens and discharges property from such liens.

The Intelligence Unit is principally concerned with the investigation of cases involving alleged evasions of taxes in cooperation with revenue agents and deputy collectors, investigation of charges of a serious nature against employees in the internal revenue service, investigations of applications of attorneys and agents to practice before the Treasury Department and investigations of prospective appointees to the service.

The Technical Staff is the appellate agency of the bureau in the determination of income, profits, estate and gift tax liability. In general, its work relates to the classes of taxation which fall within the jurisdiction of the United States Board of Tax Appeals. It is an independent organization in the commissioner's office and performs its work under the commissioner's supervision. It consists of an administrative office in Washington and ten field divisions comprising thirty-seven local offices distributed throughout the United States at points chosen with a view to taxpayers' convenience. The principal duties of these field divisions are to determine for the commissioner the liability of taxpayers who have protested the revenue agent's preliminary findings in their cases, before any final action is taken with respect thereto and to consider proposals submitted by taxpayers for the settlement of cases pending before the Board of Tax Appeals. In performing both of these functions, the heads of the various field divisions act as the exclusive representatives of the commissioner in cases coming within their territorial jurisdiction, subject to the condition that proposed settlements in cases docketed by the board must be concurred in by representatives of the chief counsel for the bureau who are attached to the field divisions as division counsels.

The activities of the office of the chief counsel for the bureau include the defense of all Federal tax cases appealed to the Board of Tax Appeals and the Board of Processing Tax Review. The review of refunds in excess of \$20,000, consideration of various administrative and internal revenue tax matters referred to it, the giving of assistance to the Department of Justice in its prosecution or defense of both civil and criminal tax cases in court, and the preparation, revision and review of regulations, Treasury decisions, mimeographs, and rulings for the guidance of the officers and employees of the bureau and others concerned.

The defense of cases appealed to the Board of Tax Appeals is carried on in the various parts of the country, where hearings are held under the immediate direction and supervision of the division counsels of the various staff divisions, who must also concur in the settlement of cases pending before the board which are disposed of without trial as well as approve the issuance of statutory notices directed by the staff.

The present procedure under which the Technical Staff and the chief counsel's office operates in the handling of cases after they leave the office of the internal revenue agent in charge and before they reach the Board of Tax Appeals is the result of a plan of decentralization which was put into effect only within the last couple of years. Formerly this work was carried on either in Washington or in the field only at irregular intervals. The new plan, which is now in successful operation throughout the country, grants the taxpayer a new procedural right before the issuance of a statutory notice of deficiency and permits the more expeditious handling of tax controversies at less expense to the taxpayers, who no longer need to travel long distances to Washington to secure a final settlement of their cases. Denver falls within the Western Division of the Technical Staff, which comprises seven western states and, as most of you no doubt know, there is a local office here which is ever ready to meet with the taxpayers and their attorneys or representatives to attempt to reach a final conclusion of their controversies, or in the alternative, to cooperate in the submission of their cases to the Board of Tax Appeals for decision.

Getting on now to the story of the income tax return. All returns must be filed with the collector of internal revenue for the district in which the taxpayer resides or maintains his principal place of business. It is the custom and practice of the collectors to mail blank returns to taxpayers who have previously filed returns, but the failure to receive a blank return is no excuse for not filing. The returns should be prepared on the proper form applicable to the particular taxpayer, and it is important that they be prepared as carefully as possible and supported by detailed schedules when necessary. When the return is received in the collector's office it is assigned a serial number and the tax shown thereon is automatically assessed. The returns are then given a preliminary examination for the purpose of verifying the computations thereon to permit the prompt adjustment of any errors therein without waiting for a complete audit to be made.

The collector's offices retain, for final audit, the smaller income tax returns showing gross income of \$5,000 or less. This audit consists almost exclusively of an office examination. If that examination reveals mistakes, doubts or discrepancies in the return, the taxpayer is asked for information, explanations, or supporting statements. If, after receipt of this information, the collector's office decides that adjustments should be made, the taxpayer is advised by letter and given the opportunity for a

conference. In the event the taxpayer is not satisfied with the action of the collector's office, he may have his case referred to the office of the internal revenue agent in charge for consideration. If an agreement is not reached in the revenue agent's office, the case follows the same procedure which will be hereinafter described.

All returns, except these small returns, fiduciary returns, which show no tax liability, and partnership returns are transmitted to the bureau in Washington after the taxes shown thereon are listed and the returns have been given a preliminary examination and classified. The non-taxable fiduciary returns and partnership returns are not sent to Washington, but are made available to the revenue agent's office for examination. After the returns are received in Washington they are given a preliminary examination and further classification. When this work is completed all returns, which it is believed warrant a more detailed examination, audit and verification, are sent to the various revenue agents in charge for appropriate action. Since the present plan of decentralization was put into effect none of the returns are actually audited by the bureau in Washington and no action is taken there towards asserting any additional tax liability or finding an overpayment of tax. This work is now done exclusively in the field.

Upon receipt of the returns in the revenue agent's office, they are again examined and classified as acceptable on their face, requiring office audit or requiring field audit. The returns of related taxpayers are also brought into one group. There is close cooperation between the various internal revenue agents in charge with respect to the handling of returns of related taxpayers who are located in various parts of the country so that the action thereon may be as uniform as possible.

Office audits involve procedure somewhat similar to office audits in the collector's office, while a field audit consists of an examination of the taxpayer's books and records on the taxpayer's premises, and also an examination of such other sources of information as the agent deems advisable to verify the accuracy of the return.

At this point, I would like to say that the primary purpose of the audit of a return, whether it be an office audit or a field audit, is to verify the accuracy of the various items of income and expense shown upon the returns as well as to ascertain if all items have been reported, and to determine the taxpayer's correct tax liability whether the liability as reported on the return is overstated or understated. The idea of an audit, especially a field audit, is not to investigate or in any way harass a taxpayer or interfere with the operation of his business. The revenue agent to whom a return is assigned for audit has a responsibility, not only to the Government by whom he is employed, but also to the taxpayer, who is not ordinarily subject to criticism for mistakes he may have made in the preparation of his return. The agent tries, as far as possible, to meet the

convenience of the taxpayer as to the time of his examination and is instructed to be courteous in his dealings with the taxpayers and their officers and employees and representatives.

When a taxpayer is resentful of the examination or fails to furnish necessary information or otherwise cooperate with the agent, he makes the job of the agent more difficult, and the result of the examination made under such circumstances is likely to be less satisfactory to the taxpayer, as well as to the Government, thereby necessarily tending to prolong any controversies which might arise. Where there is a tendency on the part of a taxpayer to withhold information or refuse to furnish the complete story of a transaction, the lawyer will be performing a real service if he will urge upon the taxpayer the futility of such action and the necessity and advisability of full cooperation. There are provisions in the statute to compel the production of books and records, etc., but it is seldom necessary to resort to such action. Although the payment of taxes never has been a popular pastime, the vast majority of taxpayers are honest in their dealings with the Government and only a very small fraction of the taxpayers engage in the practice of deliberate evasion.

In many instances tax disputes which are taken to the Board of Tax Appeals or the courts could have been ironed out and satisfactorily disposed of at the very inception of the controversy and at much less expense if the taxpayer had furnished the same information to the revenue agent at the time of his examination as he submitted later on to the board or the court. This is true particularly in cases involving questions of fact.

The revenue agent, during the course of his examination or at the conclusion thereof, discusses the various adjustments he proposes to make with the taxpayer, or his designated representative, explaining the nature of the adjustments which appear to be necessary and the reasons therefor, giving the taxpayer an opportunity to state his reasons, if any, why the adjustments should not be made. This discussion results in an agreement in many cases where changes have been found necessary. In either event the agent makes a detailed report of the result of his examination. This is done whether the result is an understatement or an overstatement of the taxes shown on the return, and also if no change is found necessary therein. This report is then reviewed in the office of the internal revenue agent in charge by another agent of long experience and with special qualifications for that type of work. Thereafter, if a change in the tax liability has resulted, a copy of the report, after effect has been given to any revisions which may have been found necessary, is sent to the taxpayer with what is called a preliminary letter. The return is always made the basis of adjustments where a return has been filed. In cases where there is an indication of deliberate evasion of taxes or fraudulent intent, a special agent from the Intelligence Unit is called in and a joint investigation is made.

If the taxpayer does not agree with the agent's report, he may, within thirty days after receipt thereof, file a protest with the internal revenue agent in charge, setting forth the particular adjustments he is not in agreement with and the facts upon which he relies in support of his position, as well as any authorities he may rely on to support his position. Upon request, a conference will be granted in the agent's office, at which a full discussion may be had with the conferee designated by the internal revenue agent in charge to consider the matter. If the taxpayer is represented at the conference by an attorney or accountant, they should be enrolled to practice before the Treasury Department. If no conference is requested, the protest will be considered on the basis of the statements contained therein and the taxpayer will be advised of the action taken thereon.

If an agreement is reached in the agent's office, either upon submission of the agent's report to the taxpayer or after protest is filed thereto and as the result of the conference, the taxpayer is requested to sign an agreement in regard thereto. This is necessary where an additional tax is disclosed for the immediate assessment and collection of the tax, which is always advisable to stop the running of interest, since the statute gives the taxpayer certain rights which must otherwise be respected before such action can be taken. If such an agreement is signed, the return then goes to the collector for assessment and collection of the taxes agreed upon. The return with all related papers is then transmitted to the bureau in Washington and the case is there subject to a post-audit review. If after such review, the action taken by the internal revenue agent in charge is approved, the case is there subject to a post-audit review. If after such review, the action taken by the internal revenue agent in charge is approved, the case is considered closed and the return and related papers are placed in the closed files. If, however, the action taken in the agent's office is set aside, the return is sent back to the agent in charge for further action. Unless the taxpayer agrees to the changes made as a result of the post-audit review, the case is back in the same position and follows the same course as other unagreed cases, the procedure in which will soon be taken up.

If the agent's report, as agreed to or as finally approved by the internal revenue agent in charge, results in an overpayment of tax, unless request is made for reference to the technical staff, which will be referred to shortly, the return and related papers are transmitted directly to the bureau in Washington, where the case is also subject to post-audit review, as in the case of an agreed additional tax. If the overpayment is approved after such review, the overpayment is scheduled for allowance and a check in the amount thereof, with interest, is transmitted to the collector for delivery to the taxpayer, except that in cases involving over \$20,000 the refund is subject to review and approval by the chief counsel's office

and if the overpayment is more than \$75,000, it must be referred to the Joint Congressional Committee on Internal Revenue Tax for consideration before the refund is actually made.

It might be stated that, as a matter of practice, agreements reached in the revenue agent's office are not ordinarily disturbed, and that it is only in exceptional cases where such agreements are set aside. It is well to keep in mind, however, that the revenue agent in charge does not have authority to finally conclude settlements.

Now we come to the next phase of our procedure, which involves the Technical Staff. If the taxpayer is unable to reach an agreement in the agent's office with respect to his tax liability and is still not convinced that it has been properly determined either with respect to an understatement or an alleged overstatement he has the privilege, under the decentralized procedure now in effect, to sign a request in writing, which is furnished him usually at the conclusion of the conference in the agent's office if no agreement is reached, that the case be referred to the technical staff for consideration. This action is not compulsory but is the last remedy which the taxpayer has in the bureau before final action is taken by it and is availed of now in the majority of disputed cases before any further action is taken. The taxpayer may waive that right if he wishes, and where an additional tax is proposed a notice of deficiency will then be issued which entitles him to appeal to the Board of Tax Appeals for a redetermination of the proposed deficiency. Such notices of deficiency are now issued by the internal revenue agent in charge pursuant to authorization of the commissioner. After such issuance the taxpayer can either file an appeal to the board within the ninety days provided for such action or pay the tax and after payment file a claim for refund, and thereafter, upon rejection, institute suit in the United States District Court or the Court of Claims. If the case involves an overpayment to which the taxpayer does not agree and he does not desire to go to the technical staff the claim for any excess amount will be rejected and suit can then be instituted in regard thereto.

The technical staff is, as already stated, the appellate agency of the bureau and operates entirely separate and distinct from the office of the internal revenue agent in charge. In other words it is the court of last resort in the bureau. When request is made for reference to the staff the entire file including the return, the agent's report, conference report, protest, etc., filed by the taxpayer and all correspondence in connection therewith are transmitted to the staff for consideration. Upon receipt of the file in the staff the case is assigned to a technical advisor or assistant technical advisor who, in due course, and as promptly as possible, affords the taxpayer the opportunity of a conference. In the technical staff the taxpayer meets men of long experience in tax problems who have had no previous connection with the case and who can, therefore, consider the

case from an entirely impartial viewpoint, giving due satisfaction and effect to both the position of the revenue agent and the taxpayer.

When a taxpayer has his case referred to the technical staff it is not necessary that any further protest or appeal be filed. However, I think it is an excellent idea, at this stage of the proceeding and before a conference is held, if the staff is advised in writing just what issues the taxpayer desires to have considered and the basis of the position taken with respect thereto. If such position has been adequately stated and sufficient facts have been set forth in the protest filed in the revenue agent's office, it might be sufficient, simply, to make reference thereto. At times a number of adjustments are made by the revenue agent with which the taxpayer agrees and does not care to take up further. It is only fair that the staff should be advised in regard to such items in order that it may concentrate on the items actually in dispute. If there is any particular preference as to the time a conference is desired, the staff should also be advised in regard thereto so that it may meet the taxpayer's convenience as far as possible. If a conference is not desired the staff should be advised accordingly and the case will be considered on the basis of the protest filed with the internal revenue agent in charge or any additional facts or argument which are submitted. Many times cases come before the staff in which the protest in the agent's office is somewhat sketchy and it is extremely difficult to understand just what the taxpayer's position is, aside from the fact that he doesn't think he owes the tax and doesn't want to pay it. It is also often a good plan to file a supplemental brief after a conference is held covering any new points which may have been raised in conference unless an agreement or understanding can be reached at the time of the conference.

These suggestions may make a little more work for the lawyer in the handling of his case, but his effort will not be lost if a meritorious case is presented. Don't get the idea that your letters or briefs are not read or considered. They are of valuable assistance, not only to the technical advisor who holds the conference, but of even more importance to the head of the staff division when the case is before him for approval of the action proposed to be taken; also to division counsel when he is called upon to approve the issuance of a notice of deficiency in cases in which no agreement has been reached.

When a case is, at the request of the taxpayer, referred from the revenue agent's office to the staff division it has exclusive authority with respect thereto and the head of the division, acting for and on behalf of the commissioner takes final action in such cases so far as the bureau is concerned. The settlements made in the staff are not subject to post-audit review in Washington, as in the case of settlements reached by the internal revenue agent in charge. There is a post-review of the action taken, for administrative reasons, but it does not affect the action already

taken in the particular case, which is final. If a settlement can be reached in the staff and it is approved by the head of the division, the controversy is there ended and the return and related papers are sent back to the internal revenue agent in charge for transmission to the collector for assessment and collection, if there is an additional tax, and for transmission to the bureau in Washington for the allowance of any refund which may be agreed upon. There is this exception to his authority in the case of a refund. If more than \$20,000 is involved, the allowance is reviewed by the chief counsel's office in Washington, and if in excess of \$75,000 the case goes to the Joint Congressional Committee on Internal Revenue Taxation for consideration before final allowance.

If no agreement can be reached in a case after conference and full discussion and consideration of the disputed issues, the issuance of a statutory notice of deficiency is, after approval by division counsel, directed by the head of the staff division. The return and related papers are then sent back to the internal revenue agent in charge for the issuance of a statutory notice under which the taxpayer can either file a petition to the Board of Tax Appeals within ninety days or pay the tax, file claim for refund and then upon rejection thereof institute suit for recovery of the tax paid.

Next we come to the Board of Tax Appeals. Before going ahead with the procedure before the board, a brief sketch of its history and organization may not be amiss. The board was created in 1924 as an executive agency independent of the Treasury Department, to which taxpayers could take an appeal and secure a redetermination of their tax liability, where a deficiency was determined by the commissioner, before payment of the deficiency. Prior to this time, the taxpayer had no remedy aside from that provided by the bureau, against any proposed additional assessment before payment. His only remedy was to make payment, file claim for refund, and thereafter institute suit. This was changed in 1924 and the taxpayer has been since that time afforded a hearing before an independent body outside the Bureau of Internal Revenue and the Treasury Department before payment of any taxes found to be due. It was not, however, until 1926 that Congress provided for an appeal or a right of review of the board's decision directly to the United States Circuit Courts of Appeal.

The Board of Tax Appeals is composed of sixteen members appointed by the President for a term of twelve years. The board itself designates one of its members, at least biannually, to act as chairman. The board's original jurisdiction was limited to review proposed deficiencies of income, war, excess profits, estate and gift taxes. At the present time, however, its jurisdiction includes also proposed deficiencies of wind-fall or unjust enrichment taxes and special excess-profits taxes on army and navy contracts under the Vinson Act of 1934.

The Board of Tax Appeals has been characterized by the Supreme Court as not technically being a court but as being a *quasi* judicial body. On the other hand, inasmuch as the 1926 Act invested the board's decisions with finality, it is now established that the board's decisions must be accorded the same respect as decisions by courts, in the application of the doctrine of *res judicata*. Whether or not the board may be considered a court, it is nevertheless true that in the sixteen and one-half years of its existence its contribution to the building up of a body of Federal tax law has been at least equal to the contributions made by the courts. Its forty-three volumes of published decisions and its numerous unpublished mimeographed decisions are utterly indispensable to an understanding of the present status of income, estate and gift tax interpretations.

During the sixteen and one-half years of its existence, there have been filed with the board more than 106,000 petitions for the redetermination of deficiencies determined by the commissioner. At one time there were more than 12,000 appeals pending. That number has been gradually reduced until at the present time there are only slightly in excess of 5,000 appeals pending, despite the fact that appeals are still being filed at the rate of more than 4,000 per year.

The large number of appeals being filed and the vast outpouring of judicial decisions involving Federal tax questions may lead one to believe, at first blush, that tax administration gives rise to nothing but endless litigation and controversy. Any intelligent analysis of that administration, however, must take into account that by far the overwhelming number of taxpayers never find themselves in any form of controversy, and that where differences between the bureau and taxpayers do arise mutually satisfactory settlements are effected in the vast majority of cases. That is true even after the cases actually get in litigation before the board or the courts, since only a small proportion of the appeals which have been filed with the board were actually tried.

Upon receipt of the notice of deficiency (or ninety-day letter, as it is sometimes referred to) the taxpayer has the right to file a petition with the board within ninety days after the date of the mailing of the notice by registered mail. Such petition must be filed with the board in Washington, where its headquarters are located, and must set forth generally the name and address of the petitioner, the date of the deficiency notice appealed from, the year or years, kind and amount of tax involved, the issues raised, together with a statement of the facts relied upon. A copy of the deficiency notice, together with the statement attached thereto, must accompany the petition.

In preparing the petition, care should be exercised in setting up the issues or errors which it is alleged the commissioner committed in determining a deficiency and issuing the deficiency notice. Each adjustment

made by the commissioner which the taxpayer desires to contest should be set up separately along with any additional issues which the taxpayer desires to raise before the board. When a case is appealed to the board, it has the exclusive authority to redetermine the petitioner's tax liability for the particular year, whether such redetermination results in a deficiency or in an overpayment of the tax. If the taxpayer has filed a claim for refund and the claim has been rejected in whole or in part, it is necessary that the issues set forth therein be raised before the board and the alleged overpayment claimed when the petition is filed in order for the taxpayer to protect his rights in the matter.

While it is important to clearly set forth the issues in the petition, it is not necessary that the issues be unduly complicated by splitting them up and setting forth each and every basis or theory on which the taxpayer feels that the commissioner has committed error in making a particular adjustment. As an illustration, we recently received a petition in which, although there was only one adjustment made by the commissioner and only one issue to be presented to the board, the petitioner set forth no less than twenty assignments of error, thereby tending to unduly complicate a fairly simple issue. The statement of facts should also be fairly complete as to each assignment of error without pleading all the detailed facts or evidence to be produced at a hearing.

It is well to bear in mind that the board will consider only issues raised in the petition or in an amended petition, which may be filed without first securing leave from the board if filed before answer and thereafter only after permission is secured from the board. Where the deficiency notice covers two or more years, the board's jurisdiction relates only to the years for which deficiencies are found. At the time the petition is filed, the taxpayer should also file a request for designation of the place at which a hearing is desired.

When a deficiency notice is issued by the revenue agent in charge, the return is kept in his office and no further action is taken until the expiration of ninety days after the notice is mailed, or until a petition is filed with the board. If no petition is filed, the return goes to the collector for assessment and collection of the tax, and is thereafter transmitted to Washington to be placed in the closed files. If a petition is filed, a copy thereof is served on the chief counsel in Washington and the return and related papers are then automatically transmitted to the staff division having jurisdiction in the matter, whether or not the case was considered by the staff before the deficiency notice was issued. Upon receipt of a copy of the petition in the chief counsel's office, it is transmitted to the staff division and the case is assigned by the division counsel to an attorney in his office for the preparation of an answer to the petition or such other pleading as may be called for. If no motion is necessary, an answer is prepared and filed within the sixty-day period prescribed by the board's

rules, together with a request for designation of place of hearing if no such request was filed by the taxpayer or if the respondent is not in agreement with the place which the taxpayer designated.

Upon the filing of the answer, issue is joined before the board and the case is ready for hearing, except in cases involving fraud or transferee liability or where an increased deficiency or other affirmative matter is pleaded by the respondent. In such cases, the petitioner has forty-five days within which to file a reply to the answer, and issue is not joined until such reply is filed. If there is any dispute between the petitioner and respondent as to where the hearing should be held, this matter is passed upon by the board, with or without hearing, and the parties are notified where the hearing will be held. After issue is joined, the case will in due course be set for hearing at the place designated at a time determined by the board, which gives adequate notice thereof.

After all pleadings have been filed, the case is assigned to a technical advisor or assistant technical advisor in the staff, as well as to the attorney who prepared the answer, if the case was not considered by the staff prior to the issuance of the deficiency notice or where such consideration was given and the taxpayer requests a further conference to discuss settlement possibilities. The staff then follows the same procedure with respect to the holding of conferences in docketed cases as in pre-ninety-day cases with the exception that if a basis of settlement is arrived at, the settlement must be approved, not only by the head of the staff division but also by division counsel, and the settlement takes the form of a stipulation which is filed with the board. When such a stipulation is filed, the board as a matter of course enters an order or decision based on the stipulation, following which the deficiency agreed upon is assessed and collected in due course or the overpayment, if any, is scheduled for allowance.

*(To be concluded in April Issue.)*

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## **Chapter 13 of the Bankruptcy Act, and Its Application to Wage-Earners**

**By HON. FRANK McLAUGHLIN\***

For some time I have been impressed with the necessity to revise the handling of wage-earner bankruptcies. Wage earners may be divided into about three classes. First, those who are unmarried and who earn more than \$75 a month; second, those who have families and earn more than \$100 a month; third, those of the first and second classes who earn less than \$75 if single, and less than \$100 if married.

As a part of the Chandler Act, effective August 22, 1938, Chapter XIII was added as new legislation. You will recall that Section 12 and

\*Referee in Bankruptcy.