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## Outline of the New Tax at Source on Dividends

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## OUTLINE OF THE NEW TAX AT SOURCE ON DIVIDENDS

**S**ECTION 213 of the National Industrial Recovery Act, which became effective on June 16, 1933, imposes upon the receipt of dividends, which are required to be included in the gross income of the recipient under the Revenue Act of 1932, by any person other than a domestic corporation, an excise tax of five per cent of the amount of such dividends. The tax is required to be deducted and withheld from the dividends by the payor corporation. Dividends declared before the date of the Act are not subject to the tax. The tax does not apply to dividends of any corporation which is itself exempt from income tax under the Revenue Act of 1932.

The corporation required to deduct and withhold any tax is under the duty, on or before the last day of the month following the payment of the dividend, to make a return thereof and pay such tax to the Collector of Internal Revenue of the District in which its principal place of business is located, or, if it has no principal place of business in the United States, to the Collector at Baltimore, Maryland. The payor corporation, under the Act, is made liable for the tax, and it is by the statute indemnified against the claims and demands of any person for the amount of any payment made in accordance with the terms thereof.

On July 14, 1933, there was issued by the Commissioner of Internal Revenue, with the approval of the Acting Secretary of the Treasury, Treasury Decision No. 4372, which constitutes the rules and regulations for the administration and collection of the tax at source on dividends. Under these regulations, the Departmental view is stated to be that the tax does not apply to dividends declared before midnight, June 15, 1933, and the position is also taken that where a corporation leases property of another corporation, and in consideration thereof agrees, among other things, to pay as rental certain amounts in installments directly to the lessor's shareholders, such payments, for the purpose of Section 213, constitute dividends to the recipients, received as from the lessor corporation. The lessee is regarded as the payor corporation, and is required to make the returns and withhold

and pay the taxes, in respect of such dividends. A declaration of dividends payable periodically in the future is regarded as void under Section 213, unless the corporation at the time of such declaration had sufficient profits, accumulated subsequent to February 28, 1913, to enable it to pay all such future dividends, and an attempt to bind a corporation to pay future dividends out of anticipated earnings is not regarded as a valid declaration of dividends.

The regulations also commit the Bureau to what would seem to be a proper construction of the statute with regard to the making of returns, in that under such regulations a corporation is not required to make any return of non-payment of dividends, but is simply required to make a return when it is required to pay a tax, that is, on or before the last day of the month following the month in which the dividends were paid. The regulations also prescribe the form of the return to be made by the payor corporation, and forms of exemption certificates for use in cases where it is claimed that the recipient of the dividends is not liable to the tax in question, and prescribe the method by which such claim of exemption shall be established.

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"The time is approaching when we shall not be warranted in excusing our judicature for its defects on the ground that the legislature has virtually monopolized control over the processes of justice. As an argument for obtaining for the courts a larger part in formulating modes of procedure criticism of statutory rules has served a purpose. But would it not be reasonable to ask the judiciary to take stock of existing powers and inaugurate such reforms as are possible on a sound basis of constitutional authority? There has been insufficient thinking in this field.

"When the bar, a generation too late, awoke to the evils of lay competition, there was an instinctive turning to the legislators for more laws, but soon it became apparent that the judicial branch already had the remedies on the shelf ready to be dispensed. The acceptance of responsibility for adequate legal training before admission had already manifested itself in a number of states.

"Why have supreme courts been so timid in the use of rule-making power? The answer is found in the uncertainty of tenure of most supreme court judges and the lack of an integrated organization of the judicial branch. We have made a slow approach to the essential question whether judges are bound to permit justice to be defeated through an inappropriate legislated rule of procedure. Can they justify themselves by passing the buck to the legislature, an essentially irresponsible body?"

From "Undeveloped Judicial Powers," *Journal of American Judicature Society*, October, 1933.