

Exhibit 40

and such contracts may contain, subject to the provisions of this Act, such terms and conditions as may be agreed upon by and between the common council of said city of Ketchikan and the United States of America or any agency or instrumentality thereof, or any other purchaser of the bonds.

SEC. 7. The provisions of the Act approved May 28, 1936, entitled "An Act to authorize municipal corporations in the Territory of Alaska to incur bonded indebtedness, and for other purposes" (49 Stat. 1388), as amended, shall not affect the issuance or payment of the bonds authorized by this Act or any proceedings taken hereunder.

Approved, August 25, 1937.

Terms and conditions.

Existing provisions not to affect issuance, etc.

49 Stat. 1388.
48 U. S. C., Supp. II, §§ 44a-e.

[CHAPTER 781]

JOINT RESOLUTION

To amend the public resolution approved June 5, 1936, entitled "Joint resolution authorizing and requesting the President to extend to the Government of Sweden and individuals an invitation to join the Government and people of the United States in the observance of the three-hundredth anniversary of the first permanent settlement in the Delaware River Valley, and for other purposes."

August 25, 1937
[S. J. Res. 135]
[Pub. Res., No. 71]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of Public Resolution Numbered 102 of the Seventy-fourth Congress is amended by inserting a comma and the words "the Government of Finland" after the words "Government of Sweden" and before the word "and"; and by inserting the words "and Finnish" after the word "Swedish" and before the word "colonists".

That section 2 be amended by inserting the words "the Government of Finland" after the words "Government of Sweden" and before the word "and".

Approved, August 25, 1937.

Delaware River Valley tercentenary.
Invitation to Finland to participate in observance of.
49 Stat. 1487.

[CHAPTER 815]

AN ACT

To provide revenue, equalize taxation, prevent tax evasion and avoidance, and for other purposes.

August 26, 1937
[H. R. 8234]
[Public, No. 377]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Revenue Act of 1937".

Revenue Act of 1937.

TITLE I—PERSONAL HOLDING COMPANIES

Title I—Personal holding companies.

SEC. 1. AMENDMENT OF 1936 ACT.

Title IA of the Revenue Act of 1936 is amended to read as follows:

49 Stat. 1732.
26 U. S. C., Supp. II, § 331.
Title IA—Additional income taxes.

"TITLE IA—ADDITIONAL INCOME TAXES

"SEC. 351. SURTAX ON PERSONAL HOLDING COMPANIES.

"There shall be levied, collected, and paid, for each taxable year (in addition to the taxes imposed by Title I), upon the undistributed adjusted net income of every personal holding company a surtax equal to the sum of the following:

Surtax on personal holding companies.

- "(1) 65 per centum of the amount thereof not in excess of \$2,000; plus
- "(2) 75 per centum of the amount thereof in excess of \$2,000.

"Personal holding company" defined.

Gross income requirement.

Stock ownership requirement.

Exceptions.

Personal holding company income.

Dividends, interest, etc.

Stock and securities transactions.

Commodities transactions.

Estates and trusts.

Personal service contracts.

"SEC. 352. DEFINITION OF PERSONAL HOLDING COMPANY.

"(a) **GENERAL RULE.**—For the purposes of this title and of Title I the term 'personal holding company' means any corporation if—

"(1) **GROSS INCOME REQUIREMENT.**—At least 80 per centum of its gross income for the taxable year is personal holding company income as defined in section 353; but if the corporation is a personal holding company with respect to any taxable year, then, for each subsequent taxable year, the minimum percentage shall be 70 per centum in lieu of 80 per centum, until a taxable year during the whole of the last half of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 70 per centum of the gross income is personal holding company income; and

"(2) **STOCK OWNERSHIP REQUIREMENT.**—At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

"(b) **EXCEPTIONS.**—The term 'personal holding company' does not include a corporation exempt from taxation under section 101, a bank as defined in section 104, a life insurance company, a surety company, or, except with respect to a taxable year ending on or before the date of the enactment of the Revenue Act of 1937, a foreign personal holding company as defined in section 331.

"SEC. 353. PERSONAL HOLDING COMPANY INCOME.

"For the purposes of this title the term 'personal holding company income' means the portion of the gross income which consists of:

"(a) Dividends, interest, royalties (other than mineral, oil, or gas royalties), annuities.

"(b) **STOCK AND SECURITIES TRANSACTIONS.**—Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

"(c) **COMMODITIES TRANSACTIONS.**—Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

"(d) **ESTATES AND TRUSTS.**—Amounts includible in computing the net income of the corporation under Supplement E of Title I; and gains from the sale or other disposition of any interest in an estate or trust.

"(e) **PERSONAL SERVICE CONTRACTS.**—(1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

“(f) **USE OF CORPORATION PROPERTY BY SHAREHOLDER.**—Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

Use of corporation property by shareholder.

“(g) **RENTS.**—Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term ‘rents’ means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting personal holding company income under subsection (f).

Rents.

“(h) **MINERAL, OIL, OR GAS ROYALTIES.**—Mineral, oil, or gas royalties, unless (1) constituting 50 per centum or more of the gross income, and (2) the deductions allowable under section 23 (a) (relating to expenses) other than compensation for personal services rendered by shareholders, constitute 15 per centum or more of the gross income.

Mineral, oil, or gas royalties.

“**SEC. 354. STOCK OWNERSHIP.**

Stock ownership.

“(a) **CONSTRUCTIVE OWNERSHIP.**—For the purpose of determining whether a corporation is a personal holding company, insofar as such determination is based on stock ownership under section 352 (a) (2), section 353 (e), or section 353 (f)—

Constructive ownership.

“(1) **STOCK NOT OWNED BY INDIVIDUAL.**—Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

Stock not owned by individual.

“(2) **FAMILY AND PARTNERSHIP OWNERSHIP.**—An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

Family and partnership ownership.

“(3) **OPTIONS.**—If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

Options.

“(4) **APPLICATION OF FAMILY-PARTNERSHIP AND OPTION RULES.**—Paragraphs (2) and (3) shall be applied—

Application of family-partnership and option rules.

“(A) For the purposes of the stock ownership requirement provided in section 352 (a) (2), if, but only if, the effect is to make the corporation a personal holding company;

“(B) For the purposes of section 353 (e) (relating to personal service contracts), or of section 353 (f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as personal holding company income.

“(5) **CONSTRUCTIVE OWNERSHIP AS ACTUAL OWNERSHIP.**—Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

Constructive ownership as actual ownership.

Option rule in lieu of family and partnership rule.

“(6) **OPTION RULE IN LIEU OF FAMILY AND PARTNERSHIP RULE.**—If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

Convertible securities.

“(b) **CONVERTIBLE SECURITIES.**—Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

“(1) For the purpose of the stock ownership requirement provided in section 352 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

“(2) For the purpose of section 353 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income; and

“(3) For the purpose of section 353 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income.

“The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included.

Undistributed adjusted net income. Definition.

“**SEC. 355. UNDISTRIBUTED ADJUSTED NET INCOME.**

“For the purposes of this title the term ‘undistributed adjusted net income’ means the adjusted net income (as defined in section 356) minus—

Computation.

“(a) The amount of the dividends paid credit provided in section 27, computed without the benefit of subsection (b) thereof (relating to the dividend carry-over); and

“(b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness.

Adjusted net income. Definition.

“**SEC. 356. ADJUSTED NET INCOME.**

“For the purposes of this title the term ‘adjusted net income’ means the net income with the following adjustments:

Additional deductions.

“(a) **ADDITIONAL DEDUCTIONS.**—There shall be allowed as deductions—

Computation.

“(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 102, section 351 (either before or after its amendment by the Revenue Act of 1937), or a section of a prior income-tax law corresponding to either of such sections.

49 Stat. 1658, 1676, 1732.

Charitable, etc., contributions. 49 Stat. 1661.

“(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the taxpayer’s net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section.

"(3) In the case of a corporation organized prior to January 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make contributions or gifts to or for the use of donees described in section 23 (c) for the purposes therein specified, to the extent such liability of the decedent existed prior to January 1, 1934. No deduction shall be allowed under paragraph (2) of this subsection for a taxable year for which a deduction is allowed under this paragraph.

Assets and liabilities
of decedent's estate.

"(b) DEDUCTIONS NOT ALLOWED.—The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (1), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use or right to use the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

Deductions not allowed.

"(1) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

"(2) That the property was held in the course of a business carried on bona fide for profit; and

"(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business.

SEC. 357. MEANING OF TERMS USED.

"The terms used in this title shall have the same meaning as when used in Title I.

Meaning of terms
used.
49 Stat. 1652.

SEC. 358. ADMINISTRATIVE PROVISIONS.

"All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title, except that the provisions of section 131 of that title shall not be applicable.

Administrative provisions.

49 Stat. 1696.

SEC. 359. IMPROPER ACCUMULATION OF SURPLUS.

"For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see section 102.

Improper accumulation of surplus.
49 Stat. 1676.

SEC. 360. FOREIGN PERSONAL HOLDING COMPANIES.

"For provisions relating to foreign personal holding companies and their shareholders, see Supplement P of Title I."

Foreign personal holding companies.
Post, p. 818.

SEC. 2. CHANGES IN CROSS-REFERENCES.

Section 12 (c), section 14 (f), and section 102 (e) of the Revenue Act of 1936 are amended by striking out "section 351" and inserting in lieu thereof "Title IA".

Changes in cross references.
49 Stat. 1655, 1656, 1677.

SEC. 3. EFFECTIVE DATES.

The amendment made by section 1 shall apply only with respect to taxable years beginning after December 31, 1936; and Title IA of the Revenue Act of 1936, as it existed prior to such amendment, shall not apply to a foreign personal holding company (as defined in section 331 of the Revenue Act of 1936, added to such Act by section 201 of this Act) with respect to any taxable year ending after the date of the enactment of this Act.

Effective dates.
49 Stat. 1732.

Post, p. 818.