SECRET

August 25, 1945

To: Secretary Vinson

From: Mr. Luxford

Conclusions and Recommendations in Connection with the Study of Administrative History of the Bureau of Internal Revenue.

In preparing the attached memorandum outlining the administrative history of the Bureau of Internal Revenue, Mr. Brenner and I made an effort to confine it to the reported facts and to refrain, so far as possible, from injecting our own opinions and theories. I believed that this approach would give you - and others you might consult - the best opportunity to form an independent judgment of the lessons, if any, to be learned from the Bureau's history.

On the other hand, in making this study I have been conscious of the fact that your interest in the subject stemmed from a desire to better understand the de facto relationship presently existing between the Bureau and the Treasury. In this memorandum I am offering you my own conclusions and recommendations on the subject.

I have intentionally avoided expressing any conclusions or recommendations on the subject of reorganizing the Bureau internally except to the extent that this was essential for improving the relationship between the Bureau and the Treasury. It does seem clear to me, however, that consideration should be given to whether some internal reorganization of the Bureau is not highly desirable. While the attached historical memorandum does throw some interesting light on this subject, I am of the opinion that any internal reorganization should be considered only after positive steps have been taken to assure an improvement of the Bureau-Treasury relations. Once this is done, plans for an internal reorganization can be considered not only in terms of improving the Bureau but also in terms of further strengthening the Bureau-Treasury relations. Moreover no such action should be considered until a thorough study of the Bureau's actual operations has been made by someone having your confidence and full support.

Conclusions

In my opinion:

(1) The Secretary of the Treasury today has - and always has had - clear legal authority to control the Bureau of Internal Revenue. Not only does the Secretary of the Treasury have clear legal authority over the Bureau, he also has clear legal responsibility for the policies and operations of the Bureau.

Moreover, in the eyes of the public, whatever the Bureau does - or fails to do - is directly identified with the Secretary of the Treasury. In a very real sense the public regards him as the man who puts his hands into their pockets and collects the taxes.

(2) The lack of de facto control over the administration and policies of the Bureau arises primarily from the fact that, although the Secretary of the Treasury has legal authority over, and responsibility for, the Bureau, the officers in charge of the Bureau - whether political or civil service appointees - have owed their primary loyalties elsewhere. Specifically, the political appointees have owed their appointments, their tenure and their loyalties to those responsible for their appointments - and not to the Secretary of the Treasury. The civil service officers of the Bureau know that Secretaries of the Treasury come and go, but the Bureau and its career men go on forever.

(3) While the political and career officials in the Bureau tend to regard the Secretary of the Treasury - and the Treasury Department - as necessary nuisances which must be tolerated but scarcely respected, yet these two types of officials do recognize that as a practical matter they must work together to achieve their separate aims. The ordinary political appointee thrown into the highly technical field of tax administration soon discovers that the "safe" way to avoid embarrassing mistakes on his part is to let the experts have their way. The career officials, on the other hand, find in these political officials powerful allies in support of their own positions and ambitions - to say nothing of counteracting "interference" by the Treasury. Thus, you discover the not infrequent anomaly of the Commissioner of Internal Revenue, for instance, ardently supporting a career man for a political post in the Bureau. Confronted with this situation, observing that in normal times the Bureau will cause little trouble if it is left alone, lacking specialized knowledge and experience in the tax field themselves, having other interests, and wary of stirring up a hornet's nest, most Secretaries of the Treasury have been inclined to leave the Bureau strictly alone.

(4) This condition of actual indifference to the Secretary of the Treasury (and the Treasury generally) and the alliance between the political and career officials in the Bureau is probably much deeper than the personalities of the particular men who happen to hold these posts at any specific time. The existence of these same forces for the better part of a century have developed an ingrained way of thinking on the part of Bureau personnel generally, so that today we are confronted not only with the facts but also a tradition that will have to be uprooted if any permanent readjustment is contemplated.

(5) If this analysis is reasonably correct, the readjustment of the fundamental relationship between the Bureau and the Secretary of the Treasury must be conceived of as evolutionary rather than revolutionary. It will require tact and skill coupled

with plenty of dogged determination and persistence to make a fundamental change. On the other hand, prompt improvement can be achieved - at least during your tenure in office - if in your opinion this goal warrants the time and effort required in its accomplishment.

(6) As indicated above, it is difficult - if not impossible - to separate the relationship between the Bureau and the Secretary of the Treasury from the relationship between the Bureau and the Treasury Department. As is true in other fields - whether it be the eyes of the public, the Congress, or other government agencies - the Treasury Department and the Secretary of the Treasury are as one in the eyes of the Bureau. Both are "outsiders" and both hold certain reins of authority. The crucial points of contact between the Bureau, on the one hand, and the Secretary and the Department on the other, are primarily at the high policy level (such as major personnel actions, legislation, regulations and general policy decisions). At these high policy points of contact the men in the Department representing the Secretary do tend to reflect his views and vice versa so that this identity in concept is most natural. This point is particularly significant to our consideration because it suggests that any move strengthening the position of either the Secretary or the Department vis a vis the Bureau will most likely strengthen the position of the other. Thus in weighing techniques for improving the situation we are free to interchange the Department and the Secretary at any point where convenience or expediency suggest it is appropriate.

Recommendations

In offering these recommendations for improving the de facto control of the Secretary over the Bureau of Internal Revenue and in achieving a greater degree of coordination in their policies and operations, I have assumed that fundamentally the short range treatment of the problem varies only in degree and not in kind from the long range approach to it. Accordingly I have not separated long range recommendations from those of short range. Rather I have dealt with them under the same heading, pointing out where necessary whether the proposals are of transitory or permanent significance.

I

The Bureau Must be Made to Realize that the Secretary of the Treasury is the Boss.

All recommendations for readjusting the relations between the Bureau and the Secretary - whether temporary or permanent in nature can be telescoped into one proposition: The Bureau must be made to realize that the Secretary of the Treasury is the boss and that the Secretary intends to be the boss. Whether the readjustment proves temporary or permanent depends upon whether the Bureau is convinced that it is only the present Secretary of the Treasury who will have to be treated as boss or whether a fundamental change has occurred which will make any Secretary of the Treasury the Bureau's boss in fact as well as theory. Once the political and career officials become convinced that the Secretary is the boss and intends to so act, the Bureau will begin to function as an agent of the Secretary of the Treasury rather than as an independent contractor.

But expressing this general recommendation hardly offers a concrete program for realizing its goal. The recommendations below will outline specific measures to implement and supplement this primary recommendation.

II

The Secretary of the Treasury Must Have the Power to Appoint and Remove the Top Bureau Officials.

As indicated in the part of this memorandum dealing with conclusions, the primary weakness in the de facto authority of the Secretary over the Bureau is that both political and career officials owe their positions and tenure to others than the Secretary. Until it is driven home to them that the Secretary has the power to hire and fire - and is willing to use it - their loyalties will remain elsewhere.

Ideally, this situation can be best remedied on a permanent basis by giving the Secretary of the Treasury the statutory power of appointment, carrying with it the implied power of removal. While there might be a good deal of political opposition to this proposal, still a powerful case in its favor can be established. Moreover Congress and the Administration are bound to be reorganization minded at the inception of the reconversion period and the proposal might have the benefit of this momentum. This might be particularly the case if this proposal were lumped with other proposals, such as increasing the number of Assistant Secretaries.

While different arguments would probably be required in selling this proposal to the Congress, from the point of view of achieving results, it would certainly drive home to the Bureau who was the boss and the Bureau would know that no matter who was Secretary of the Treasury, he would be the boss.

If this proposal is deemed impractical or too likely to provoke delay where immediate action is necessary, then the Commissioner and the top Bureau officials should be informed specifically and unequivocally that the President is giving the Secretary of the Treasury an absolutely free hand over their appointment and tenure. This will give the Secretary de facto authority, at least temporarily. The weakness in this measure is quite obvious. In the first place the Bureau officials will be prone to regard it as temporary and subject to change with a new Administration, a new Secretary of the Treasury, or a change in political tides. They may be subservient but hardly reconstructed in mental outlook for they will be tempted to bide their time, meanwhile preserving their other loyalties against the day when conditions return to "normal".

While it may be argued that the de facto power of appointment is adequate and the case of Assistant Secretaries be offered as proof, there are certain difficulties with the analogy. In the

first place, in the case of Assistant Secretaries there is no tradition of autonomy to overcome as in the Bureau's case; in fact there is at least a considerable degree of tradition to the contrary. In the second place, some of us can recall a few vivid instances where Assistant Secretaries were not the choice of the Secretary and where the power of the Secretary over his assistants was more theory than fact.

Finally, it should be pointed out that one of the deficiencies of a de facto appointing power is that the Secretary does not fight just one battle but is exposed to a whole series of battles, some of which may occur at times when his position may be at least temporarily weakened or embarrassed. Each time there is a major appointment to make, however, the Secretary's candidate must run the gamut of the President, the Party and the Congress - and the Bureau will know it too.

All of the foregoing is true regardless of whether the title of the head of the Bureau of Internal Revenue remains that of "Commissioner" or is changed to "Assistant Secretary of the Treasury in charge of the Bureau of Internal Revenue". While a change in titles might be helpful in dramatizing the fact that the Secretary was now the boss, still the fundamental question of loyalty would remain, regardless of title. In this connection it should be pointed out, however, that the actual job of administering the Bureau must be performed by a man in the Bureau and not a man located in an office in the main Treasury. He will have all he can do if he is on the spot and in a position to see things operating at first hand. He cannot do that and serve as one of the Secretary's personal staff here in the Treasury. Moreover, there are cogent reasons for believing that the task of integrating the administration of the Bureau and the policy formulating functions here in the Treasury should be performed by an Assistant Secretary on your personal staff. If this is the case, it might seem a little odd for the operating head of the Bureau with the title of "Assistant Secretary" to be reporting through another Assistant Secretary.

In any event it is suggested that the Bureau's relations with the Treasury would be improved effectively and dramatically by the appointment of "your man" to be its head, regardless of his title. This seems almost vital if you are to get the head of the Bureau to enter into this task with the spirit and drive essential to its achievement. Besides, it will dramatize the fact that you intend to be the boss and the other Bureau officials and the staff will get the point.

III

Qualifications for the Head of the Bureau

It would hardly require a separate heading for this subject to recommend the appointment of a "good man", but I should like

to suggest some of the special qualifications that would assist even a "good man".

A. The head of the Bureau should be a man having the Secretary's confidence and whom the Secretary will be prepared to support even when the "throat cutting" is at its worst. This means a man who sees eye to eye with the Secretary on the Secretary's objectives and on the means of achieving these objectives.

B. He must be a man with sufficient personality and interest to actually dominate the Bureau and who will feel personally responsible for the Bureau's operations. It goes without saying, of course, that he must devote his full time to running the Bureau.

C. He should be an experienced government man who can be plenty tough and yet wear gloves. It is the old story of "sending a thief to catch a thief". The man named must have the training and ability to equip him in taking the measure of the Bureau experts. Otherwise, he will find himself in the position of most political appointees taking the post; he must either be able to play their game and win or he will be forced to enter into a one-sided alliance with them to protect himself. But in suggesting that he be a government man, I emphasize that this does not mean he should be a Bureau man. He should not be a Bureau man because then the chances are he would be one of the club. Rather he must be outside the Bureau Club and proselyte its members into the Treasury Club. He does not need to be a tax expert if he knows where to get loyal men who are experts to assist him and to warn him of the pitfalls. He must be tough enough to take on the bureaucrats if need be; at the same time temperamentally inclined to win his battles without showing all his cards.

D. He should be a good judge of other men. No one man can hope to do the job. He must be able to pick other good men to serve as his lieutenants and be able to inspire them with his philosophy and approach. He must be able to win over part of the top staff, at least, to make them his men and ready to support him technically where necessary. In any bureau like Internal Revenue there are always a number of top caliber men who are themselves sick of the petty intrigue and bureaucracy. These men, if they can be separated from the chronic malcontents, will be ripe for a new deal and the opportunity to push forward. They will become the loyal supporters of those giving them this opportunity. The man selected as head of the Bureau also should be able to attract new blood from the Treasury proper and other government agencies since not only may this be necessary but in any case it is desirable in the course of reshaping the Bureau's attitude toward the Treasury.

IV

Integration of Bureau and Treasury

The Bureau should be more closely integrated with the tax policy side of the Treasury as well as with the Treasury generally. If relations between the Treasury and the Bureau are bad, there is an excellent chance that both have been at fault on this score. Specifically, while the Bureau must come to realize that the Secretary of the Treasury is the boss, the relationship between the Treasury and the Bureau cannot be that of master and servant. It must be that of partners whose separate success or failure depends upon joint cooperation.

Both the Treasury and the Secretary must earnestly seek to gain the confidence of the Bureau. In the past the Bureau has operated on the basis of being isolated from the Treasury and thus compelled to fight its own battles both with Congress and within the Treasury proper. Almost never has it been able to view the Treasury as a protector of its interests and sympathetically concerned with its problems. To a substantial extent this feeling has developed from the fact that the Treasury official supervising the Bureau has been either a weak man himself and afraid to stick up for the Bureau; or had little interest or sympathy with the Bureau and its problems; or was too preoccupied with other Treasury problems and could not take the time to look out for the Bureau. Correcting this situation should contribute to improving the Bureau's morale and establishing an espirit de corps with the Treasury.

The Bureau must be given greater encouragement to participate in the formulation of policy at a high level, including legislation. I know that a procedure already exists which is designed to achieve this end and I have no doubt but what it is reasonably effective. On the other hand, it probably can stand a good deal of improvement if we proceed in our reconsideration from the premise that people who see eye to eye are in charge of both the Bureau and the Treasury. Instead of a procedure equipped to absorb sniping and unsympathetic analysis, we should focus on one for partners.

Finally, the transfer of personnel between the Bureau and the Treasury should be greatly encouraged. Tax men in the Bureau should be carefully considered for any appointments in the tax field in the Treasury and vice versa. This is most desirable from the point of view of each group getting to know and better understand the problems of the other. Each gets more of the feeling that it is a part of a larger whole rather than two separate bodies with little in common except that they operate in the same general field. In addition, career men in the Bureau should be able to look forward to the possibility of extending their career in the main Treasury and men on the legislative side of the Treasury should be given the opportunity to observe first hand how their programs work in practice. This freedom of movement back and forth will do much to erase the existing barriers and drive home to both that they work for the Secretary of the Treasury.

Carroll D. Lunsford

C O N F I D E N T I A L

AUG 25 1945

To Secretary Vinson

From Messrs. Luxford and Brenner

Subject: Administrative History of the Bureau of Internal Revenue.

This memorandum has been prepared after a study of the existing histories of the Bureau of Internal Revenue, the legislative provisions relating to administration of the Bureau, the hearings, reports, and debates in connection with the revenue laws which made important changes in the administration of the Bureau, and the hearings and reports of the more important Congressional investigations of the Bureau. Unfortunately there is no recent study of the revenue administration sufficiently thorough to be useful.

Considerable time has been spent in the examination of legislative histories, which did not prove very fruitful because the important administrative provisions are generally incorporated in revenue bills and are of minor significance as compared to the actual tax provisions. The material that does exist in the legislative histories is scattered throughout the debates, and frequently the administrative provisions were not the subject of extended discussion.1/

This study does not include material which might be obtained from an examination of the proceedings in connection with appropriations made by Congress for the work of the Bureau, nor does it include a check of the contemporary newspapers and periodicals for collateral background on the changes in administrative methods.

We have not felt free to examine files of the Bureau of Internal Revenue or check other sources there which would probably be valuable in providing information on this subject. Nor could we have examined the material which has been studied during the limited time in which this memorandum has been prepared if we had also made use of the Bureau's sources.

1/ The most valuable sources we have examined are:
The Internal Revenue System in the United States, Frederick C. Howe. (1896)
The Bureau of Internal Revenue, Service Monographs of the United States Government, No. 25(1923)
Monograph of the Attorney General's Committee on Administrative Procedure, Part 8 (Senate Document No. 10, 77th Congress, 1941).
Hearings of the Select Senate Committee on Investigation of the Bureau of Internal Revenue, March 14-April 9, 1924 and November 20, 1924-June 1, 1925.
Report of the Select Senate Committee on Investigation of the Bureau of Internal Revenue, January 12, February 2, and February 26, 1926 (Report No. 27, 69th Congress).

I. Early History.

There was no permanent system of internal taxation prior to the Civil War, and there was no permanent administrative agency for the collection of internal taxes until that time. During the earlier years, however, there were several periods during which internal taxes were collected, and the administrative system ultimately established as a permanent part of the Government is based largely upon the experience of these early attempts to collect internal taxes.

A. Post-Revolution Period

The background of the first period of internal taxation has an important bearing on the type of adminstrative machinery that has been developed in the field of internal revenue. When the Federal Government was established under the Constitution, the difficulties caused by excise taxes levied by Parliament were still fresh in the minds of the public and of Congress. It was apparent to Hamilton, however, that customs duties alone would not provide sufficient funds for the financing of the Government. War expenditures had created a substantial public debt and revenue measures were needed if it was to be reduced.

Hamilton introduced measures for the imposition of excise taxes. According to Howe, The Internal Revenue System in the United States (1896), one of Hamilton's first reports advocated a moderate tax on liquor, but Congress rejected the proposal because of its centralizing tendencies which would result from the creation of a large body of Federal tax collectors. Howe (p. 17) then describes the opposition to excise taxes in the following paragraph:

> "This aversion to internal taxes was partly traditional, partly the result of the absence of legal restraint in those isolated regions where the opposition was most intense. In the South, moreover, whiskey was looked upon almost as a necessity, and a tax upon its manufacture and sale no more defensible than one imposed upon any other product of the farm. In Pennsylvania, also, the feeling was most bitter; and the legislature of that State instructed its representatives in Congress to oppose the passage of such a measure by every means in their power, while a memorial from Westmoreland County (Pa.) insisted, among other things, that to convert grain into spirits was as clear a natural right as to convert grain into flour. An excise 'was the horror of all free states,' said one vigorous speaker in the House; it was 'hostile to the liberties of the people;' it would 'convulse the government; let loose a swarm of harpies, who, under the denomination of revenue officers, will range the country, prying into every man's house and affairs, and, like the Macedonian phalanx, bear down all before them'."

Beginning in March 1791, however, a series of internal taxes was enacted on such items as liquor, sugar, tobacco and legal instruments. This period of internal taxation lasted until 1802, when Congress enacted a law which abolished both the taxes and the administrative machinery which had been set up for their collection. During this entire time the collections from customs far exceeded the collections from internal taxes, and when the fiscal position of the Government had recovered from the difficulties arising out of the revolution, the internal taxes were discontinued.

To administer the internal taxes the country was divided into fourteen revenue districts, each state being a separate district. Each district had one supervisor, appointed by the President and confirmed by the Senate, whose salary was fixed by the President. Aggregate salaries could not exceed seven per cent of the internal taxes collected on liquor, or more than $45,000. There was also a provision for the division of revenue districts into inspection districts and the appointment of inspectors by the President with the consent of the Senate. The effect of these internal taxes was primarily political. It led to the "Whiskey Insurrection" in Pennsylvania during 1794, which clearly demonstrated that the central government was endowed with sufficient power to enforce its enactments. From a fiscal point of view, however, the taxes were of little significance.

Fear of centralizing tendencies and the jealousy with regard to states' rights undoubtedly led to the administrative provisions calling for the division of the country into districts with local supervisors and local inspectors. Even the fact that local citizens enforced the taxes was not a sufficient palliative to prevent the "Whiskey Insurrection".

In 1798 Congress for the first time levied a direct tax on real property. In connection with this tax the law provided for the creation of divisions, each consisting of several counties within a state, and a commissioner for each division was appointed by the President with the consent of the Senate. All of the commissioners in a particular state were to act as a board to divide the state into assessment districts, appoint assessors and make regulations. The other officials who were created in connection with the direct tax were surveyors of the revenue. These men, however, were not appointed by the commissioners who were responsible for the direct tax, but were appointed by the supervisors who had the responsibility for the collection of other internal taxes.

In 1792 Congress created the office of "Commissioner of the Revenue" to replace the Assistant to the Secretary of the Treasury, who had been in charge of the collection of taxes. In 1800 Congress also created the office of the Superintendent of Stamps, who was in charge of the paper used for the purpose of collecting stamp taxes. The laws do not specify how either of these officials were appointed.

Hamilton had been the proponent of internal revenue measures and had worked hard to establish a system of excise taxes. When Jefferson took office in 1801, however, he took steps promptly to abolish the system. Before becoming President, Jefferson had attacked the excise taxes as likely to conduce dismemberment of the Union, and his party was pledged to the repeal of the taxes. Several reasons were given for the repeal. It was contended that the taxes which had been levied were oppressive, that the idea of an excise tax was hostile to the nature of a free people, and that the administration of internal taxes tended to multiply offices and increase patronage.

All the offices referred to above were abolished when the internal taxes were repealed by the Act of April 6, 1802 (2 Stat. 148). At the time, 400 officials were employed to administer the internal taxes, and the cost of maintaining this force was twenty per cent of the taxes collected.

B. War of 1812.

From 1802 to 1812 customs duties, the receipts from the sales of public lands, and the overdue payments of the direct taxes were not only sufficient to meet the current needs of the Government but were also large enough to permit steady reduction of the public debt. In 1813, 1814, and 1815 Congress enacted a number of internal taxes for the purpose of financing the interest on the public debt, which had risen considerably as a result of the war. The excise taxes were all abolished in 1817. Congress also levied a direct tax of $3,000,000 in 1813, and in 1815 provided for an annual direct tax of $6,000,000. The larger direct tax was never collected but was reduced to $3,000,000 for the year of 1816 and abolished thereafter.

To administer the new taxes Congress recreated the Office of the Commissioner of the Revenue, and divided the states into collection districts with a collector and a principal assessor in each district. The Commissioner, the collectors and the assessors were all appointed by the President and confirmed by the Senate. It was the duty of the collectors to collect both the direct and excise taxes, and their functions were quite similar to those which they have at present. The Commissioner of the Revenue was placed in charge of the collection of all taxes, and the Secretary of the Treasury was authorized to transfer to him the collection of customs duties.

In 1817 Congress abolished all of the offices created for the purpose of collecting the excise and direct taxes, but the collectors were to remain in office until the outstanding taxes had been collected. In 1830 the Office of the Solicitor of the Treasury was created, and that officer, who was appointed by the President with the consent of the Senate, was charged with all of the residual duties of the Commissioner or acting Commissioner of the Revenue, in relation to collection of outstanding direct and internal duties.

From 1814 to 1818 when these taxes were collected, the receipts from customs still exceeded the receipts from internal taxes, but not by nearly so large an amount as during the prior period of internal taxation.

II. The Civil War Laws.

The first Civil War Revenue Act was enacted on August 5, 1861 (12 Stat. 292). It levied a direct tax of $20,000,000 apportioned among the States, an income tax, and increased the customs duties. The Act authorized the President to divide the States and Territories into collection districts, each district having a collector and an assessor appointed by the President with the consent of the Senate. In addition, the Act provided for a Commissioner of Taxes to supervise the collection of the direct tax and the income tax to be nominated by the Secretary of the Treasury and appointed by the President. The Act also permitted the States to assess and collect their quotas of the direct tax, and this was the course which was followed by the States.

It was the Act of July 1, 1862 (12 Stat. 432) that actually established the internal revenue system which exists today. This legislation taxed so many things that a definite administrative system for their collection was essential. Congressman Morrill explained the bill to the House and, with respect to the administrative provisions, he said: "We have, therefore, looked to such examples as we found upon our statutes, and have endeavored to arrange a system by which all descriptions of duties could be assessed and collected through the same officers." (58 Cong. Globe 1194).

The old machinery which had been used for the collection of taxes during and immediately after the war of 1812 had expired. Instead of reviving it, Congress created the office of Commissioner of Internal Revenue, to be appointed by the President and confirmed by the Senate. The Commissioner, under the direction of the Secretary of the Treasury, was charged with the same general duties which he has today. During the house debate it had been proposed that the Commissioner act under the direction of the President but this proposition was defeated when it was pointed out that all revenue matters should be under the Treasury Department. (58 Cong. Globe 1218).

The President was authorized to divide the country into collection districts not exceeding the number of representatives in each state except California. The President created the full number of districts authorized by law (185) and for each district an assessor and a collector were appointed.

The principal officials created by the Act of 1862 were the assessors and the assistant assessors. Assessors were appointed by the President with the consent of the Senate, and they appointed their own assistants. Their functions included finding the

taxable property, assessing the taxes and hearing all appeals. The office of assessor remained the focal point of tax administration during the war and for several years thereafter until it was abolished in 1872. Assessors and their assistants were paid by the day.

Collectors, who were appointed by the President with the consent of the Senate, at that time were only fiscal agents and their principal duty was to collect the taxes in accordance with the lists furnished them by the assessors. Collectors were paid commissions on the money they collected and the amount of commissions any individual could receive waslimited to $10,000 except in the larger districts. The commissions had to cover not only the collectors compensation but also that of the deputies they were authorized to appoint. Deputies were paid by the collectors and no additional funds were made available for this purpose.

The collectors had authority to appoint inspectors, who were the chief enforcement officers of the period. These men confined their activities to the enforcement of the taxes on liquor. Occasionally other inspectors were appointed in some districts in connection with the tobacco, petroleum and coal oil taxes. The authority to appoint inspectors was contained in a later act passed in 1862. (Act of July 1, 1862, 12 Stat. 447). In accordance with its terms, inspectors did not receive any payment from the Government but were paid fees by the manufacturers whose goods they inspected. This led to many abuses and according to "The Bureau of Internal Revenue", by Schmeckebier and Eble (1923), the fee system "was one of the weakest features of the whole Internal Revenue System, and there is no doubt that this method of compensation was one of the principal avenues of temptation to dishonest distillers, who were extra generous with 'fees' and thereby obtained the necessary protection which in later years led to the worst frauds in the history of the Nation."

The next revenue measure was enacted March 3, 1863 (12 Stat. 726). Under this legislation assessors were given an annual salary and an allowance for office rent, which replaced their per diem compensation. In addition, they were allowed commissions on collections made in their districts.

The Act of 1863 also created the position of Deputy Commissioner of Internal Revenue, to be appointed by the President and confirmed by the Senate, and it authorized the Secretary of the Treasury to appoint three revenue agents. This was the first statutory reference to revenue agents who were to be appointed for the purpose of enforcing the revenue laws.

The Revenue Act of June 30, 1864 (13 Stat. 223) made a few changes in the administrative provisions relating to the collection

of internal revenue. It changed the method of compensation of collectors to an annual salary plus commissions, and it changed the method of paying inspectors from the fee system to a per diem compensation plus a travel allowance. This latter provision was undoubtedly intended to do away with the abuses arising from the fee system, but Congress allowed the improvement to remain in effect only two years. The only other administrative change brought about by this legislation was the increase in the number of revenue agents to five.

The Revenue Act of March 3, 1865 (13 Stat. 469) limited the commissions of collectors and increased the number of revenue agents from five to ten. It also authorized the Secretary of the Treasury to appoint a Commission of three persons to study the whole problem of taxation, including "the manner and efficiency of the present and past methods of collecting the internal revenue". The Commission's report will be dealt with under III below.

Shortly after the Civil War, several changes were made in the administrative provisions which had been worked out during the War. In 1866, the fee system of paying inspectors was restored.(14 Stat. 155), and the abuses which had characterized this sytem were revived. The same act increased the number of deputy commissioners from one to three, but the deputies were reduced to two in 1874 (18 Stat.6) and back to one in 1876 (19 Stat. 151).

On March 6, 1872 a law was passed which changed the system of having deputy collectors paid by the collectors. From that time on their salaries were fixed by the Secretary of the Treasury, on the recommendation of the Commissioner of Internal Revenue, and were paid by the Government. The appointment of internal revenue agents was changed by the same act which provided that they were to be appointed by the Commissioner of Internal Revenue, who was also authorized to fix their salaries (17 Stat. 241). The Act of December 24, 1872 (17 Stat. 401) abolished the offices of assessors and assistant assessors. As of July 1, 1873, these offices were terminated and their functions were transferred to the offices of the collectors.

III. The Revenue Commission of 1865.

The Revenue Commission appointed by the Secretary of the Treasury in accordance with the Act of March 3, 1865, made 13 special reports and a general report. In the general report it devoted some space to criticizing the manner of administration of the internal revenue laws.

The principal defects it found in the Bureau of Internal Revenue were:

(1) The lack of power and discretion in the officials of the Bureau;
(2) The absence of positions with high salaries and permanent tenure which would attract and keep competent personnel;
(3) The splitting of penalties and forfeitures with informers;
(4) The appointment, retention and promotion of officers on the basis of other circumstances than qualifications of good behavior.

The Commission reviewed the functions of the Secretary of the Treasury and concluded that the office was, next to the President, the most important in the Government. They expressed some concern over the fact that many duties of minor importance were imposed upon him in addition to the major ones, and accordingly, in suggesting a plan of reorganization in the administration of revenue collection, they proposed that an "Under-Secretary of the Treasury in Charge of the Revenue" be appointed, and that the general supervision and direction of revenue collections be assigned to him.

The Commission also proposed the appointment of a commissioner of the customs, a commissioner of the excise, a solicitor of the customs, and a solicitor of the excise. These 4 men, together with the Under Secretary, should constitute the Board of Commissioners of the Revenue, which should determine rules and regulations relating to collections, the expenditures to be incurred in collecting revenues, management of all revenue litigation, and the distribution of all awards for good service and valuable information.

Another recommendation of the Commission was that no subordinate officer in the Bureau be appointed until his qualifications had been examined and approved by the Board of Commissioners. They also suggested that the Secretary and the Under Secretary participate on the floor of the House in all debates on revenue questions. Finally, they proposed that each leading source of revenue be recognized as a division of the Bureau and be placed in charge of an officer wit a permanent position and a good salary.

The response of Congress to the report of the Revenue Commission was contained in the Act of July 13, 1866 (14 Stat. 98). Before that time the only officers recognized by law were the commissioner, the deputy commissioner, and a cashier, other clerical assistance being drawn from employees of the Secretary of the Treasury. The new legislation provided a definite personnel for the Bureau. It authorized under the direction of the Secretary the employment of two deputy commissioners, in addition to the existing one, a solicitor, seven heads of divisions, and 244 clerks, messengers and laborers for the Washington office.

The sweeping reforms recommended by the Commission were not followed, however. The farthest that Congress went in this direction was to authorize the Secretary of the Treasury to appoint a Special Commissioner of the Revenue in his department to hold office for 4 years and make reports on every aspect of the internal revenue policies.

The attitude of Congress toward the report of the Commission was clearly stated by Congressman Morrill:

> "The law authorizing the Secretary of the Treasury to assign to the Bureau of Internal Revenue a sufficient force to carry it on will expire by its own limitation on the 1st of July next, and it therefore becomes necessary to make some arrangement for the permanent organization of the bureau. It will be seen that the bill makes provision for this object. The operations of this bureau are now on so large a scale as to require the services of able, clearheaded men, trained to business, and of unquestioned integrity. Such men in our country are highly prized, and command the highest salaries paid in financial and commercial employments, and unless we fix salaries at an adequate or competing point we shall only command the services of second-rate men. The bane of the Treasury Department is that so soon as officers receive the stamp of its confidence they receive a loud call and the offer of more pay to go elsewhere. The best officers are, therefore often mere birds of passage, here today but may be gone tomorrow. The Bureau of Internal Revenue, it is quite apparent, is deficient in executive force. It is impossible that the Commissioner, however faithful and industrious, and I know of no man more so, should be able to consider all the complicated cases daily arising for investigation in the administration of his office, and we have conceded not only the propriety but the absolute necessity of reinforcing the office by two additional deputies and one solicitor.
>
> "Notwithstanding all the disadvantages we have labored under in putting new and untried laws suddenly into operation, it is gratifying to find that the expense of collecting the revenue has been far less than was anticipated--including everything except printing done by the Public Printer--amounting, in 1865, to no more than two and seventy-five one hundredths, or two and three fourths per cent. This contrasts most favorably with the cost of collection in Great Britain, where, after years of experience, the cost varies from four and one quarter to five and three fourths per cent.

"The services of the gentlemen employed on the revenue commission, I have no doubt, are properly appreciated by Congress, as they will be by the country, and the Committee of Ways and Means were unanimously, I believe, of the opinion that this kind of service should not be entirely discontinued. Believing that at least one similar officer can be profitably employed permanently, they have added a section to the bill for this purpose, and I have no doubt it will prove wise economy to adopt and continue it so long as we may be compelled to raise anything like our present revenues from taxation."
(71 Cong. Globe 2438).

IV. Post Civil War to Post World War.

The Revenue Commission's report was not the only recognition of flaws in the administration of internal revenue. Writing in 1896, Howe (The Internal Revenue System in the United States) concluded that during the Civil War:

"* * *inefficiency and maladministration characterized the service, dissipating the confidence of the public and deleteriously affecting the revenues.

"Two causes were in the main responsible for this result: one, the inadequacy of the remuneration offered; but by far the most potent cause was the absence of a merit system for the determination of appointments. Probably no branch of our national administration has suffered so much from the spoils system as has the internal revenue service; for in no department of the government are efficiency and honesty so essential in the employee". (p. 196)

The Act of July 20, 1868 (15 Stat. 125) authorized the Secretary of the Treasury, on the recommendation of the Commissioner, to appoint 25 supervisors of internal revenue. The supervisors were to be enforcement officers, and, among other things, were to be empowered to transfer inspectors, storekeepers, and gaugers from one district to another and to suspend these officers from duty. In 1870 (17 Stat. 241) the number of supervisors was reduced to 10 and the power of appointment was transferred from the Secretary to the President with the consent of the Senate. In 1876 (19 Stat. 152) the offices of supervisors were abolished and the powers of transfer and suspension were vested in the Commissioner, with all other powers transferred to the collectors.

The 1868 legislation also authorized the commissioner to employ 25 detectives for duty under the direction of the supervisors or for other special duties. In 1872 (17 Stat. 241) the title of these officials was changed from detective to agent.

The jobs of gaugers and storekeepers were created by the

1868 legislation. Gaugers were to be appointed by the Secretary, on the recommendation of the assessors in the districts in which they were to work. They checked on the production of liquor within their districts and were paid by the collectors out of fees paid by the distillers whose production they supervised. Storekeepers were appointed by the Secretary and were paid a daily wage. By the Act of March 6, 1872 (17 Stat. 241) gaugers were provided salaries paid by the Government rather than by the firms for which the gauging was done.

As revenues declined after the Civil War, steps were taken to reduce the size of the administrative machinery. The number of deputy commissioners was reduced to two in 1874 and to one in 1876. The number of districts was reduced in 1876 and again in 1877. In 1883 President Arthur by Executive Order further reduced the number of collection districts to 82, but later in the year he increased the number to 83 and then to 84.

In 1879 (20 Stat. 329) the number of revenue agents was increased to 35. At the same time, provision was made for the payment by the Government of the salaries of deputy collectors who had formerly been paid by the collectors. The collectors' salaries were also changed by fixing a minimum of $2,000 if annual collections were below $25,000, and a maximum salary of $4,500 if the annual collections exceeded $1,000,000. This method of paying collectors remained in force until 1919.

From the end of the Civil War until 1875 the most serious problem which faced the Bureau of Internal Revenue was that of the whiskey frauds. From 1864 to 1868 the rate on distilled liquors was so high that a premium was placed on fraud and evasion. In addition, revenue inspectors received their compensation through fees paid by the distillers, which opened the way to bribery and fraud. After a Congressional investigation it was recommended that the liquor tax be reduced from $2.00 a gallon to 50¢, and this was done in 1868. As a result, the revenue increased enormously.

From 1871 to 1875 additional frauds occurred through a conspiracy known as the "Whiskey Ring". The principal feature of this conspiracy was the large scale corruption of government officials.

Howe (supra p. 198) describes the attempts to improve the collection of liquor taxes as follows:

> "The perfection of the details of the service received but scant attention during the war; but with the growing familiarity of officials with its defects from the disclosures of the press, as well as the invaluable investigation of the Revenue Commission, the importance of administrative efficiency became apparent. A careful revision of so much of the law as related to the manufacture and assessment of distilled spirits was made at the

> instance of the Revenue Commission in the years immediately subsequent to the war, the leading feature of which was the subjection of each distillery to the direct surveillance of a government inspector, whose duty it was to oversee the process of manufacture and sale, and the assessment of the duty. While the change was conducive of greater fidelity on the part of weighers, gaugers and other officials, and placed an additional check upon them, the powerful inducements which could be offered by the dishonest distillers frequently neutralized the effect of the measure; and there was no provision for constant rotation of the inspectors from one still or district to another, as was suggested by the Commission, a provision which would have greatly enhanced the efficiency of the law. But the effect of this, as well as all other remedial efforts on the part of Con ress, was checked by the dishonesty, complicacy, and inefficiency of officials, traceable in part at least to the system of appointment and retention in office for political services."

Collections by contract were attempted from 1872 to 1874. The Secretary of the Treasury was authorized to enter into such contracts by an apparently innocent provision in an appropriation act passed in 1872 (17 Stat. 69). A few months after this act was passed a contract was made with John D. Sanborn for the collection of taxes from 89 distillers and purchasers of whiskey. Shortly thereafter, another contract was made for Sanborn to collect taxes on estates and incomes of 760 persons. A third contract covering a list of about 2,000 names, including 350 foreign residents, was also executed. A fourth contract was made for Sanborn to collect taxes from 592 railroad companies. The supervisors and collectors of internal revenue were directed by the Secretary to assist Sanborn in his work. The Commissioner protested but was unable to do anything about the contracts.

All the contracts provided that Sanborn would receive 50 per cent of the gross amount collected, and he collected $427,000. In 1874 there was a House investigation of the whole procedure and it was found that no responsible official in the Treasury Department knew much about the matter. None of them was willing to accept responsibility, but none of them was found to have been influenced by corrupt motives. The committee also found that many of the taxes collected by Sanborn would have been collected in due course by the Bureau in the ordinary discharge of its duty. As a result of the committee's recommendation, the law authorizing collection by contract was immediately repealed.

In 1887 an Executive Order reduced the number of collection districts from 85 to 63.

The Act of August 2, 1886, which placed a tax on oleomargarine, authorized the Secretary of the Treasury to appoint an analytical chemist and microscopist, and also authorized the Commissioner to employ additional chemists and microscopists when necessary.

The McKinley Tariff Act of 1890 (26 Stat. 567) provided for a bounty on sugar obtained from products grown in the United States and provided that the bounty should be determined by the Bureau of Internal Revenue. The Commissioner protested against such a function being placed in the Bureau but Congress paid no attention and the Bureau administered the law until it was repealed in 1894. This required the employment of 12 sugar inspectors and many deputy collectors of internal revenue for special duty as sugar weighers.

The Wilson Tariff Act of 1894 (28 Stat. 508) revived the income tax and led to the establishment of the Income Tax Division in the Bureau of Internal Revenue. This Division functioned only a few months before the Supreme Court held the income tax unconstitutional.

When Howe wrote his book in 1896 (supra, p. 203) he described the administration as follows:

> "In concluding this sketch of the years of experimentation by means of which the present perfected machinery for the garnering of the resources of the nation into the Federal Treasury has been brought about, it may not be inadvisable to describe in some detail the workings of the internal revenue department in the collection of the several taxes at present imposed. The ground plan of the system has not changed fundamentally from the outlines defined by Hamilton over one hundred years ago. As in the department of customs, the chief ministerial officer is the Commissioner, whose duties remain substantially as outlined in the Act of 1862 * * *. In recent years, with the gradual reduction of the system, there has been a tendency to centralize and simplify the collection of the taxes, as is seen in the abolition of the offices of district assessors, as well as in the reduction of the collection districts, of which there are at the present time but sixty-three. It is now the duty of the commissioner to make all inquiries, determinations, and assessments of all taxes and penalties, and to certify a list of such assessments to the collector of the proper district, who is authorized to collect and account for the same to the commissioner. The latter officials are appointed by the President, by and with the consent of the Senate, and must be residents of the districts in which they serve. Every collector before entering upon the duties of his office, is required to execute a bond, with not less than five sureties, conditioned upon the faithful performance of his duties. He is then empowered to appoint as many deputies as he may deem necessary, for whose actions he is, in a like manner, held responsible.
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> "In addition to the official force directly employed in the collection of the taxes, there are appointed by the commissioner a certain number of special agents, who are employed from the central office for the purpose of checking any attempted evasion or suspected complicity on the part of other officials; while the Secretary of the Treasury is

authorized to appoint, wherever deemed necessary, a certain number of gaugers and storekeepers * * *".

In 1909 increasing government expenditures led to the enactment of a tax of 1 per cent on the net income of corporations in excess of $5,000. A Corporation Tax Division was organized in the Bureau to supervise the collection of this tax.

In 1913, after the Constitution had been amended, Congress enacted a new income tax law (38 Stat. 166). The tax was imposed on individuals and corporation and the 1909 tax on corporations was repealed. Following the enactment of this law, the Personal Income Tax Division was created in the Bureau, and the Corporation Income Tax Division continued to collect the tax on corporations.

In 1913 the Overman Act (38 Stat. 208) authorized the appointment of bonded deputy collectors by the collectors without regard to the civil service rules. This legislation was enacted as part of the Urgent Deficiency Appropration Act which came up soon after the Democratic Administration took office in 1913. A series of executive orders had been issued by Presidents Cleveland, Roosevelt and Taft, concerning the status of deputy collectors. Cleveland put them under civil service, Roosevelt took them out and Taft covered them into civil service again. The result of this series of orders was that the positions of deputy collectors were filled by Republicans who were protected by the civil service rules. The Overman amendment to the Urgent Deficiency Appropriation bill was designed to relieve the situation.

There is some doubt whether the amendment was necessary. In the course of the debate, Senator Overman quoted an opinion of the Attorney General, dated January 3, 1913, in which that official held that the term of office of a deputy collector expires automatically upon the appointment of a successor to his collector (50 Congressional Record, 5388).

The proponents in the House contended that the civil service had been used by the Republican Party to create an enormous political machine. They alleged that the deputy collectors had been selected for political service and that the amendment was not aimed at destroying the civil service, but was intended to make an efficient service possible.

The opposition in the House contended that the deputy collectors could be removed from office if they were inefficient, and hence, it was unnecessary to remove the protection of civil service from these jobs. It was contended further that the problem could well be solved by requiring the deputy collectors who had been covered under civil service without examination, to take an examination and permit them to hold their jobs only if they passed it.

The same arguments were used in the Senate and in addition it was asserted that the logic of the amendment would mean the

complete abolition of the civil service system. Senator Hughes, a Democrat from New Jersey, even went so far as to argue that the Overman amendment was contrary to the Democratic platform.

In 1941 when the Attorney General's committee on administrative procedure issued its report on administrative procedure in government agencies, it found that each collector nominated his own staff, subject to the approval of the Commissioner and the Secretary. The monograph points out that even stenographers had deputy collector's status and were required to post nominal bonds. At the end of the fiscal year 1939 there were about 8,500 permanent employees in the collector's office, but only a few of them were civil service employees (Administrative Procedure in Government Agencies, part 9, page 1, Senate Document No. 10, 77th Congress).

In 1914 the Bureau was required to enforce the regulatory provisions of the narcotics laws. The Harrison Act of December 17 (38 Stat. 785) regulated the use of narcotics and provided for the payment of a fee of $1.00 by every person dealing in narcotics, and the Commissioner was required to enforce it.

The World War brought about several changes in the administration of internal taxes, most of which arose out of the constantly increasing revenues of the Government. The first World War Act was the Revenue Act of October 22, 1914 (38 Stat. 745), but this was a temporary measure and had little effect on the administrative provisions. The Revenue Act of September 8, 1916, however, levied an estate tax, a capital stock tax, and a munition manufacturers tax, and these new taxes required new administrative machinery. An Estate Tax Division was organized in the Bureau, which employed a field force of investigators to examine returns and enforce the tax. The munition manufacturers tax was collected only two years but the capital stock tax is still in effect.

During 1917 a number of tax measures were being considered by Congress and the time consumed in their consideration placed a heavy strain on the Bureau. Many of the proposals would have modified the entire internal revenue system and would have necessitated reorganization of the administrative machinery. Consequently, the Commissioner maintained close contact with Congress and received confidential advance information on the proposals in order that he might keep the collection districts informed and prepared to administer new laws. During this period the duties placed upon the Bureau were both tax collecting and regulatory. It was selected as the agency to enforce the prohibition laws and other prohibitory measures.

The first revenue measure enacted after the declaration of war was the Act of October 3, 1917 (40 Stat. 300). This Act amended many previous laws and was very difficult to administer as a result. It levied an excess profits tax, and in order to interpret this part properly, the Secretary of the Treasury selected a group of excess profits tax advisors from business and professional men. In addition, the Bureau was reorganized

with the creation of new offices and divisions. All of the collectors were placed under the direction of a supervisor of collectors, and the 31 revenue agents were placed under the direction of a chief revenue agent. These two officials were made equivalent in rank to deputy commissioners.

During 1918 Congress debated a large tax bill, but it was not enacted at the time the war ended, and finally a smaller bill was approved on February 24, 1919 (40 Stat. 1057). Among other things the new law placed a tax on the products of child labor and a Child Labor Tax Division was organized to enforce it. This Division was abolished when the act was declared unconstitutional in 1922. The 1919 act also created a Supervisory Tax Board of 6 members appointed by the Commissioner with the approval of the Secretary. The Board functioned for about 6 months and was followed by a Committee on Appeals and Review, which was an independent unit of the Bureau responsible only to the Commissioner. The Committee's function was to hear and consider cases appealed by taxpayers and to answer the questions asked by the income tax unit.

The 1919 act also provided for the employment of 5 deputy commissioners and adjusted the salaries of collectors, including a provision that no collector should receive more than $6,000 a year. From 1919 to 1921 there were a number of shifts in the functions of the various units and divisions having jurisdiction over miscellaneous excise taxes. The ultimate development was that a Sales Tax Unit supervised the collection of taxes which were regarded as purely sales taxes, and the Miscellaneous Unit supervised other excise taxes, such as stamp taxes, taxes on transfers of stock and special taxes on businesses and occupations.

Prior to 1920 the revenue agents and inspectors outside of Washington served all the units of the Bureau and investigated cases involving all kinds of internal tax matters. They were responsible to the chief revenue agent, who in turn was responsible directly to the Commissioner. By 1920 the enforcement of the income tax had become such a difficult problem that the Field Auditing Division was created. The men assigned to this division were charged with the investigation of income and excess profits taxes, but were not required to do any other work. The Revenue Act of November 23, 1921 provided for the appointment of a Tax Simplification Board consisting of 3 public members appointed by the President and 3 officers of the Bureau designated by the Secretary. Its duties were to investigate the procedures used by the Bureau and to make recommendations that would simplify them.

During the prohibition era the Bureau had great responsibilities in connection with the enforcement of the liquor laws. This work has been largely obviated by the repeal of the prohibition amendment to the Constitution, and accordingly an extensive discussion is unwarranted.

V. Senate Investigation of 1924-1926.

On February 21, 1924 Senator Couzens introduced a resolution calling for the appointment of a Special Senate Committee to investigate the Bureau of Internal Revenue, and make recommendations for corrective legislation. The terms of the resolution authorized the Committee to hold hearings but did not permit the employment of experts. As first presented, the resolution contained several "whereas" clauses indicating that there had been unnecessary delay in decisions of income tax cases, that the delay had been characterized by inefficiency on the part of the Bureau and implied that there had been fraudulent and corrupt practices in the administration of the revenue laws. The Finance Committee reported the resolution without the preamble, but Senator Robinson stated that the resolution itself was broad enough to enable the committee to make any investigation that circumstances indicated to be necessary.

Senator Couzens stated in the debate that his reason for introducing the resolution was the public criticism which had been leveled at the Bureau. There were complaints about arbitrary and unreasonable assessments, delays in final determinations, and many other injustices.

The resolution was adopted March 12, 1924 and on March 14, the Special Committee held hearings which lasted until April 9. On April 10 Secretary Mellon sent a letter to the President in which he stated that he approved the purposes of the resolution but that Senator Couzens had conducted the hearings in such a way that he was convinced that their sole purpose was to vent some personal grievance against himself. He alleged that the Committee attempted only to investigate companies in which he was interested and that they had failed to show any favoritism but had abandoned all constructive purposes. Mellon's letter stated further that the Committee had adopted a resolution authorizing Francis J. Heney to conduct the investigation on the understanding that neither the Committee nor the Government would pay him any compensation, but he would be paid by Senator Couzens. Mellon charged that the investigation injured the efficiency of the Bureau and the taxpayer suffered because the morale of the 60,000 employees of the Department was impaired. He stated "If the imposition of private resources be permitted to interfere with the executive administration of government, the machinery of government will cease to function." The letter concluded with this statement: "When, through unnecessary interference, the proper exercise of this duty is rendered impossible, I must advise you that neither I nor any other man of character can longer take responsibility for the Treasury. Government by investigation is not government."

On the 11th of April President Coolidge sent a message to the Senate attaching a copy of Secretary Mellon's letter. In his message the President said that he would always lay before the Senate any information that was not of a confidential nature, but that the attack being made on the Treasury went beyond any legitimate requirements. Coolidge alleged that the appointment of an agent and attorney to act in behalf of the United States but to be paid from some source other than Treasury, violated an act of 1917, and that this unwarranted intrusion must be resisted by the Executive. He stated, "Under a procedure of this kind the Constitutional guarantee against unwarranted search and seizure breaks down * * *". The conclusion

of the letter was, "If it is to continue, if the government is to be thrown into disorder by it, the responsibility for it must rest on those who are undertaking it. It is time that we return to a government under and in accordance with the usual forms of the law of the land. The state of the Union requires the immediate adoption of such a course."

A very spirited debate followed the receipt of the President's message and political charges of all kinds were made. Preparations were being made for the political conventions to nominate Presidential candidates, and the Senators of both parties tried to turn this dispute to their political advantage.

In the course of the debate Senator McKellar quoted a letter which had been received a few days before by one of the members of the Committee from Secretary Mellon. In it Mellon stated that he felt the Committee should make an immediate investigation in order to satisfy itself and the public whether or not the companies in which he was interested had received any favor from the Government. A few days later he sent the letter described above to the President. Senator Robinson attacked the validity of the statements made by Mellon on the ground that it was impossible to interfere with the efficiency of the Bureau or demoralize the 60,000 employees of the Treasury by merely asking for the tax returns of the companies in which Mellon was interested. No demand had been made that the records be furnished but Mellon had turned them over to the Committee voluntarily. He also pointed out that there could be no violation in this instance of a Constitutional guarantee against unwarranted search and seizure because that section protected private citizens and was not a guarantee to public officials against publicity of their records.

Senator Borah pointed out that when an investigating committee demanded certain files from the Attorney General, and he refused to furnish them because they were confidential, the President requested the immediate resignation of the Attorney General. On the other hand, when the Secretary of the Treasury manifested impatience and resentment toward an investigation of tax returns in which he was interested, the President assumed an entirely different attitude and sent a message to the Senate seeking to call a halt to the investigation.

The question of prohibition enforcement was also dragged into the argument, as it had been charged that the Bureau was not making a sufficient effort to enforce the law. The principal issue was whether Secretary Mellon had any connection with a forged liquor permit on the basis of which a saloon keeper in Pittsburg had obtained a large quantity of whiskey from a bonded warehouse.

Some of the senators attempted to defend Senator Couzens' action in agreeing to pay Mr. Heney's salary himself but ultimately the Senate amended the earlier resolution so as to permit the Committee to hire experts.

Additional hearings under the new resolution were held from November 20, 1924 until June 1, 1925. On January 12, 1926 the Committee filed a partial report and on February 2 filed the second part of its report. The minority views were published on February 26.

The hearings were extremely voluminous, but consist primarily of the examination and discussion of particular cases which had been before the Bureau. There were, however, a number of references to the adequacy of the administrative machinery.

The Committee heard the testimony of Frank E. Frazier, a former employee of the Bureau, on the question of decentralizing the work of the Bureau. Frazier pointed out that there were two field organizations in the Bureau. One was the collection service, under the supervision of 65 collectors, which had 7,000 people and was charged with the collection of revenue and the auditing of individual income tax returns below $15,000. Most of its employees were not covered by the civil service rules. The second field organization was the force of 5,000 people known as internal revenue agents and inspectors, who were under the direction of 64 internal revenue agents in charge. The people in the agents' offices were all civil service employees, but did not do much auditing except in those cases referred to them by Washington. Frazier pointed out that 7,000,000 returns were audited in the field and the work in Washington was considerably in arrears. He stated that it was his opinion that all auditing ought to be done in the field.

Mr. Nash, the Assistant Commissioner of Internal Revenue, stated that further decentralization had not taken place because there was not a proper organization for the auditing of all returns in the field. His reasons for this statement were that the men in the field were not all civil service employees, were not technically qualified to handle difficult returns, and were not paid high enough salaries.

Mr. Hartson, Solicitor of the Bureau, testified that decentralization promotes a lack of uniformity in the rulings. He stated that it is desirable to get taxpayers' cases settled, but it is more important to the same taxpayer to be treated the same way that other taxpayers in other jurisdictions are treated.

Mr. Frazier concluded by proposing that the Overman Act be repealed, all the field forces, except the prohibition forces, be consolidated, and that the auditing of practically all income tax returns be done in the field. He predicted that this would speed up the work of the Bureau, and that its appropriations could be reduced by several million dollars at an early date.

At a later point Mr. Nash testified to the same effect as Mr. Frazier that there were two field organizations, one under the collectors, which was not civil service, and one under the agents, which was civil service. He said that he would like to see all of the field work under one administrative head, but that he did not believe the problem could be solved by combining the collectors' offices and the agents' offices because so many of the collector's

employees were political appointees. Nash testified that the men in the agents' offices did a higher type of work and received on the average, higher salaries than the deputy collectors.

Senator King, who was a member of the Committee, stated that he felt it would be better to have one organization and have it responsible to Washington, rather than to local collectors. He wanted to know whether Secretary Mellon would sponsor such a move and whether it would be approved by the Treasury Department. Mr. Nash stated that it had been studied very carefully by the Treasury, but that any such proposal would require a drastic change in the law in order to keep the efficient people who did not have civil service status but who should stay in the internal revenue service. Senator King expressed his view as being that the duties of the collectors should be transferred to the revenue agents.

VI. Senate Committee Report of 1926.

The investigation of the Special Senate Committee dealt primarily with the administration of the income and estate taxes. In addition, there were investigations of the administration of the prohibition laws and of the reasons for yearly variations in taxable income. In its first report the Committee took up the investigation of the income tax administration and stated that a subsequent report would be filed on this same subject. Apparently the second report has never been filed.

The two principal abuses which the Committee found in the administration of the income tax were allowances for discovery depletion and allowances for amortization of war facilities. In connection with depletion allowances the Committee found that Bureau officials superior to the engineers, were setting aside sound determinations of value and substituting excessive ones on the basis of analytic appraisals. This practice was forbidden by the regulations, but the regulations were being consistently ignored and the Committee recommended an amendment to the law. The Committee also found that the head of the Engineering Division was unfit to hold his position and that there was a growing tendency to make a production record regardless of principle and to give persistent and influential taxpayers anything they demanded in order to reach a settlement. The abuses found in connection with the amortization of war facilities were numerous and consisted of complicated methods of allowing greater amortization than was permitted by the revenue laws. On this point the Committee report states that taxes on about $140,000,000 of amortized values could be saved if Congress took prompt action.

The Committee also found that it was the Commissioner's consistent policy to exceed his authority to compromise taxes and in many cases he gave unsecured creditors and stockholders of insolvent corporations precedence over claims for taxes. The Committee concluded that the fraud penalty was never enforced by the Commissioner.

The administrative reasons behind these abuses were discussed in detail by the Committee. The report states that the "practically unlimited discretionary power vested in the Commissioner of Internal Revenue" was really being exercised by the heads of the divisions of the Bureau. There were no adequate rules or restrictions governing the division heads and their work could not be reviewed unless a taxpayer was dissatisfied with their determinations or a refund in excess of $50,000 was involved. Even subordinates within the divisions were unable to protest, because it was the policy of the income tax unit to discourage complaints and protests by employees, and no direct communication with the Solicitor or the Commissioner was permitted.

One of the principal defects discussed by the Committee was the failure to publicize principles and practices to be followed in the determination of tax liability. They found that this resulted in gross discrimination because employees of the Income Tax Unit had no uniform principals to follow; that taxpayers often failed to claim allowances because they did not know that similar allowances had been granted to others; that because precedents were not published, taxpayers were forced to employ former employees of the Income Tax Unit to advise them in tax cases, which placed an artificial premium on the value of the services of such persons and enabled them to charge excessive fees; that the demand for the services of ex-employees of the Bureau caused an enormous turnover in the personnel of the Bureau; and that because of the unsettled state of the law, many claims were filed which should be settled by precedents.

The Committee concluded that the publication of rulings would be the strongest possible deterrent against the making of unsound rulings, but that instead of following such a course, it was the policy of the Bureau to fix taxes by bargain so that the most persistent trader got the lowest tax. Although the Committee recognized that there were objections to throwing open the records of the Income Tax Unit to the public, it suggested the necessity of giving an opportunity for some outside scrutiny to protect the public against discrimination.

In connection with the investigation of alleged delays in the closing of tax cases, the Committee found that many delays took place and were the result of bargaining with the taxpayers and the granting of many extensions of time to furnish information required to determine the validity of deductions.

On February 6, 1926, more than three weeks after the filing of the majority report, two of the five members of the Committee filed a report containing the minority views. In it they severely criticized the majority for their handling of the investigation and the report, and they also attempted to refute all of the criticisms made in the majority report.

The comments on the Committee procedure were that most of the cases discussed in the report had not been the subject of hearings but had been examined after the close of the hearings from photostats made from internal revenue files. The report was prepared by counsel and the Bureau was given an inadequate opportunity to comment on it.

The Committee never met to discuss the report and it was published hastily, giving an erroneous impression to the public of the state of work in the Bureau.

With respect to the comments of the majority on administrative procedure in the Bureau, the minority made several arguments. First, they stated that the Committee had never examined the Bureau procedures at first hand as they had been invited to do by the Bureau officials. Second, they contended that the practice of delegating authority to division heads was justified, because it would be impossible for all the activities of the Bureau to be under the direct personal supervision of the Commissioner. The minority believed that the review procedures were adequate and that every step possible had been taken to protect the interests of the Government. The minority also contended that an enormous number of rulings and regulations had been published and that the bulletins in which rulings appeared had, for the preceding two years, contained a statement on the cover that "no unpublished ruling or decision will be cited or relied upon by any officer or employee of the Bureau of Internal Revenue as a precedent in the disposition of other cases." Finally, the minority attempted to show that the Bureau had accomplished a great deal against very serious obstacles.

The number and amount of taxes had been increased enormously between 1916 and the end of the investigation, which had caused the Bureau to expand its personnel in an attempt to handle the volume of work. In addition, new types of taxes were imposed and a great many new duties were imposed on the Bureau. The minority felt that the Bureau had overcome the greatest difficulties and had succeeded in becoming practically current in its work. They felt that the investigation had been limited to individual cases and had not gone into over-all accomplishments of the Bureau. The concluding paragraph of the minority report is as follows:

> "The accomplishments of the bureau in collecting more than $30,000,000,000 in revenue and in auditing and closing 58,000,000 cases has been subjected for the last year and three months to this type of critical investigating by the investigating committee and its staff, composed of some 50 lawyers, engineers, accountants, and clerks. It has resulted in a criticism of various regulations which had received the approval of two administrations and many competent and able authorities on taxation, besides disclosing a difference of judgment in some specific cases. The investigation has disclosed no hint of any irregularity or fraud. That the bureau can so successfully withstand such a searching and critical investigation is a great tribute both to its present and past officials and employees. The bureau is entitled to the respect, admiration, and praise of the Congress and of the country for the honest and efficient way in which it has performed its work."

VII. Recent Developments in Administration.

When the office of the supervisor of collectors was abolished some time after 1920, a new procedure was established for the examination of collectors' offices. The men who had been employed by the supervisor of collectors under civil service became supervisors of accounts and collections. They were placed under the direction of a Deputy Commissioner and organized into an Accounts and Collections Unit created in 1922. They have been used to supervise the personnel of collection districts, to train new personnel, and to speed up collection drives in districts where receipts lag. The purpose of their audit of the collectors' books is to maintain agreement between the collectors' books and the amounts charged against them at the Bureau in Washington. They also report on the general efficiency of the employees, and before the bulk of collectors' employees were covered under civil service, they reviewed efficiency ratings and had considerable control over the personnel of the collectors' offices.

Without benefit of legislation the Bureau took steps in 1927 to improve the work of the collectors' offices, particularly where inadequacies resulted from the fact that the collectors were political appointees. Collectors were persuaded in most instances to appoint their chief deputies or chief clerks as "Assistant to the Collector". At the time this was done there was no requirement that the Assistant to the Collector be a civil service officer, but in many cases the men appointed were under the civil service. According to the Internal Revenue Manual (1936) the Assistant to the Collector is under the general direction of and responsible to the collector. It is his duty to plan, organize, coordinate, supervise, and be directly responsible for the operations of the office organization. He assumes the duties of the collector in the collector's absence. The chief weakness of this office is that the collector is free to choose any member of his staff and to change assistants at will.

In 1926 Congress authorized the President with the consent of the Senate to appoint a Special Deputy Commissioner of Internal Revenue. This official has such duties as are prescribed by the Commissioner or authorized by law. (44 Stat. 126).

The Act of May 29, 1928 (45 Stat. 882) provided that the salaries of collectors of internal revenue could be readjusted and increased under regulations prescribed by the Commissioner with the approval of the Secretary. It also limited the amount received by any collector to $7,500 per year.

On March 2, 1929 legislation was enacted (45 Stat. 1496) changing the salaries of storekeeper-gaugers from a per diem basis to annual salaries based on their then existing per diem rates.

In 1934 an act was passed (48 Stat. 758) which reorganized the legal branch of the Bureau of Internal Revenue. Prior to the enactment of this law there was a Solicitor of the Treasury who had powers in a limited field not assigned to other legal officers of the Department, a General Counsel for the Bureau of Internal Revenue, an Assistant General Counsel for the Bureau, and an Assistant Solicitor of the Treasury.

The report of the House Committee on Ways and Means stated that "there is no responsible legal officer in the Treasury with power to coordinate the legal work of these separate groups of lawyers and to prevent waste and duplication of effort among them" (report No. 704, 73rd Congress, page 40).

The new law created the office of General Counsel, who is appointed by the President with the advice and consent of the Senate. In addition, the President is authorized to appoint, with the consent of the Senate, an Assistant General Counsel for the Bureau of Internal Revenue. Five other Assistant General Counsels were authorized to assist the General Counsel in the performance of his duties, but these appointments are made by the Secretary of the Treasury and only the Assistant General Counsel for the Bureau is appointed by the President and confirmed by the Senate.

The General Counsel is vested with the powers, duties, and functions of the General Counsel for the Bureau of Internal Revenue, the Assistant General Counsel for the Bureau of Internal Revenue, the Solicitor of the Treasury, and the Assistant Solicitor of the Treasury, all of which offices were abolished.

The Revenue Act of 1934 in which these provisions relating to the legal staff of the Treasury were incorporated, had been introduced for the purpose of increasing the revenue by preventing tax avoidance. Numerous amendments were made in the rate structure and in the detailed technical provisions of the tax laws. In the course of the debate Congressman McFadden made a speech concerning the information which had been accumulated concerning former Secretary Mellon's administration of the Bureau. In addition to criticizing the confidential rulings which were used extensively during Mellon's administration and the compromises which were entered into at that time, Congressman McFadden severely criticized the treatment which had been accorded employees of the Bureau. He alleged that employees were liberally rewarded at the Government's expense if they assisted Mellon to enrich himself, or the companies in which he was interested, through the avoidance of taxes. He alleged further that those who did not serve Mellon's purposes could not advance and those who dared to question his activities were "demoted, dismissed, dishonored and disgraced". He also contended that civil service employees of the Bureau were never granted the hearings to which they were entitled under the law if their status was affected by the action of Mellon or his associates.

In 1938 two new divisions concerned with taxation problems were created by administrative action. These were the Division of Tax Research and the office of the Tax Legislative Counsel. Although neither group was supposed to be a part of the Bureau or responsible to the Commissioner, their salaires and expenses were paid out of the annual appropriations for the Bureau. The Treasury Department Appropriation Act, 1944 (57 Stat. 250) is the first legislative reference to these divisions. Separate appropriations have been provided for them since June 30, 1943.

In 1938 Secretary Morgenthau decided to decentralize the settlement machinery of the Bureau of Internal Revenue. The purpose of decentralization was to creat a single unified settlement and trial agency with office facilities which were near the taxpayer's residence or place of business. The program is described in an article by Milton E. Carter, an official of the Bureau, in 17 Taxes 403 (1939) and there is a more detailed discussion in Part 9 of the monograph of the Attorney General's Committee on Administrative Procedure.

The Technical Staff of the Bureau of Internal Revenue was created for the purpose of carrying out the decentralization policy. That Staff exercises all the authority of the Secretary of the Treasury and the Commissioner of Internal Revenue in the review of protested tax determinations made by Internal Revenue agents in charge, and in the settlement of contested cases and their defense before the Court of Tax Appeals. The Technical Staff is charged with the disposition by settlement or trial of the many protested cases which arise each year. In 1939 it had ten field divisions and 38 permanent local offices. They grant hearings to taxpayers who request them after having failed to reach agreement with the investigating internal revenue agent. If the taxpayer declines to accept the determination of the Technical Staff the case is returned to the internal revenue agent in charge, who issues a notice of deficiency. Appeals by taxpayers to the Court of Tax Appeals again bring the case back to the Technical Staff which considers them with a view to settlement by agreement.

The Technical Staff operates under the general supervision of the Commissioner and has representatives of the Chief Counsel attached to each field office. The local member of the Chief Counsel's office must concur in settlements negotiated after appeals have been made to the Court of Tax Appeals, and they also try the cases which are not settled at this point.

The Monograph of the Attorney General's Committee criticizes some details of the decentralization program but gives it general approval and considerable praise for the speed with which it was organized and put into operation.

During the Senate's consideration of the Revenue Act of 1942, an incident occurred which illustrates in a striking manner the relationship of the Secretary of the Treasury and the Commissioner of Internal Revenue. This incident led to the enactment of a statute (Internal Revenue Code, section 5012) which made a very important change in the relationship of the Treasury and Congress on tax matters.

The Revenue Bill supported by the Secretary provided for withholding personal income taxes at the source. The Secretary testified before the House Committee that it was the best available expedient to achieve a more convenient method for the payment of income taxes. Notwithstanding the Secretary's testimony, and without notifying the Secretary of his intention to do so, the Commissioner appeared before the same Committee and testified in very emphatic terms that the provision was administratively unfeasible. The Commissioner gave similar testimony in even more emphatic terms before a Subcommittee of the Senate Committee on Finance, again without obtaining the Secretary's consent.

As a result of this conflicting testimony the Senate Committee proposed an amendment to the bill authorizing the Joint Committee on Internal Revenue Taxation or its chief of staff to obtain any information directly from the Bureau (including the Assistant General Counsel for the Bureau) or directly from any other department or agency. In defending this provision during the debate, Senator Clark of Missouri said:

> "The views of the general headquarters contingent, so to speak, and the 'brain trust' of the Treasury Department, were expressed at great length to the subcommittee, and it was casually said that the Bureau of Internal Revenue was being represented at that time by a young man whom I did not know. I went out and called up the Commissioner of Internal Revenue who had the actual administration of the measure in hand, and asked him to come up and appear before the committee. He told me he could not do it without the permission of the Secretary of the Treasury. I wrote the Secretary of the Treasury and gave the committee views in direct divergence, just as far as they possibly could be, from the views which had been expressed on his behalf by the Treasury officials themselves, and as the result of the information he gave the committee, the committee saw fit to make a very radical change in the proposal, in fact to make a complete divergence." (Cong. Rec., DI, October 9, 1942, p. 8271).

Senator Barkley tried to amend the proposal by requiring the Joint Committee or its chief of staff to secure information through the heads of the departments and agencies but his amendment was defeated by a vote of 74 to 10.

The Act of June 9, 1943 (57 Stat. 150) authorized the President with the consent of the Senate to appoint two Assistant Commissioners in the Bureau of Internal Revenue. This act also abolished the office of Assistant to the Commissioner, which had been created in 1919. The Assistant Commissioners perform such duties as may be prescribed by the Commissioner or required by law.

VIII. Existing Laws Relating to the Administration of the Bureau.

There has never been any statutory creation of the Bureau of Internal Revenue, although the Bureau is mentioned in several statutes, including statutes relating to the social security taxes (Internal Revenue Code, sections 1420, 1530, and 1605), the provisions relating to the narcotics tax (Internal Revenue Code, sections 2550 and 2606), and those relating to the power of the Joint Committee on Internal Revenue Taxation to obtain information (Internal Revenue Code, section 5012).

A. Statutory Relationship of the Secretary and the Commissioner.

The Commissioner of Internal Revenue is appointed by the President by and with the advice and consent of the Senate. The office is created in the Department of the Treasury, and the Commissioner is entitled to a salary of $10,000 per year (Internal Revenue Code, section 3900). The next section of the Internal Revenue Code sets forth the powers and duties of the Commissioner. It begins with the phrase "The Commissioner, under the direction of the Secretary---." It is obvious, therefore, that the position of the Commissioner of Internal Revenue is not endowed by legislation with any peculiar attributes which are not attached to a number of other officials of the Department who are responsible to the Secretary of the Treasury, although they are appointed by the President and confirmed by the Senate.

Section 3901 continues with the provision that the Commissioner, under the direction of the Secretary, shall superintend generally the assessment and collection of all taxes providing internal revenue, and he is also to prepare and distribute the instructions, regulations, drafts, forms, blanks, stamps and other matters pertaining to the assessment and collection of internal taxes.

The internal tax laws impose a number of functions and duties upon the Commissioner with respect to the various taxes. In nearly all instances, however, the authority granted him may be exercised only with the approval of the Secretary of the Treasury. There are literally hundreds of references in the Internal Revenue Code to the authority of the Commissioner being exercised only with the approval of the Secretary. This is true of practically all of the functions which involve the exercise of a considerable amount of discretion. An examination has been made of the Internal Revenue Code for the purpose of determining the functions of the Commissioner which he exercises without the specific approval of the Secretary. Several such instances have been found, but they are generally of minor importance, and it should be noted that even in these cases the Commissioner is

probably subject to the direction of the Secretary pursuant to the terms of section 3901 of the Internal Revenue Code.2/ With respect to narcotics and liquor taxes, the Secretary is authorized to transfer duties and functions freely irrespective of the statutes relating to the Commissioner of Internal Revenue. (Internal Revenue Code, sections 2606 and 3170).

It is apparent from an examination of the statutes that Congress has been careful to preserve the power of the Secretary to supervise and direct the activities of the Commissioner. Any difficulties that have arisen in this connection must, therefore, have been the outgrowth of administrative practices and the laws relating to the appointment and service of other officers of the Bureau.

B. Relationship of the Collectors to the Commissioner and the Secretary.

The collectors of internal revenue are appointed by the President with the consent of the Senate, but the statutes relating to their appointment and duties do not indicate to whom they are responsible. Very little has been found which indicates how the existing relationships developed. It seems clear, however, that the practice is to make the collectors responsible to the Commissioner. The Internal Revenue Manual (1936) is issued for the information and guidance of collectors and their employees. It is signed by the Commissioner of Internal Revenue and approved by the Acting Secretary of the Treasury. In its description of the functions and responsibilities of the collector, it states (section 2) "the collector of internal revenue is under the general administrative direction of, and is responsible to, the Commissioner of Internal Revenue for the administration of the internal revenue service in his district; * * *". It is apparent,

2/ The Commissioner is authorized to approve certain types of accounts maintained by taxpayers (sec. 41); to allocate income and deductions between corporations having identical ownership (sec. 45); to require bonds when credit is allowed for foreign taxes (sec. 131); to close the taxable year, make assessments and abate them when taxes are in jeopardy or taxpayer is about to leave the United States (secs. 146, 872, 3660); to obtain specified types of information from corporations (sec. 148); to require information concerning deductions and credits allowed to non-resident aliens (sec. 213); to extend time for payment of taxes on unjust enrichment, require bonds and settle claims involving the same tax (secs. 702 and 705); to adjust abnormalities affecting income subject to excess profits taxes (sec. 722); to extend time for payment and require bonds in connection with the estate tax and deficiencies (secs. 822 and 871); to prescribe stamps and the method of affixing and cancelling them (secs. 1809, 1815 and 1816); to prescribe the form of inventories and books under the tobacco taxes (secs. 2017, 2018, 2036, 2037, 2055 and 2056); to issue

therefore, that the Secretary, the Commissioner and the Collectors operate on the basis of direct responsibility of the collectors to the Commissioner.

Whatever power the Secretary may exercise over the actions of the collectors stems from the Secretary's general authority with respect to the Commissioner. As noted in an earlier part of this memorandum, the Commissioner acts "under the direction of the Secretary". In addition the Secretary has authority to suspend collectors but only in cases of fraud, gross neglect of duty, or abuse of power. (Internal Revenue Code, section 3942 and Reorganization Plan No. II, sec. 404).

C. Existing Laws Relating to Subordinate Positions in the Bureau.

In addition to the Commissioner the statutes in effect today provide for the appointment by the President, with the consent of the Senate, of two Assistant Commissioners. The President also has authority, with the consent of the Senate, to appoint a Special Deputy Commissioner. There are five other deputy commissioners employed in the Bureau pursuant to section 3915 of the Internal Revenue Code. The statutes also provide for the appointment by the Secretary of an analytical chemist and a microscopist and the legal staff described above.

Sections 3940 and 3941 of the Internal Revenue Code authorize the President with the consent of the Senate to appoint a collector for each of the 65 internal revenue districts. The President is also authorized to consolidate collection districts. The salaries and allowances for expenses of collectors are determined by the Secretary upon the recommendation of the Commissioner. This control of salaries provides the Secretary of the Treasury with considerable power over the appointment and continuance in office of collectors. In addition to the initial determination of salaries, the Secretary has the right to approve or disapprove regulations prescribed by the Commissioner, readjusting and increasing the salaries of collectors.

2/continued.
regulations on bulk sales of tobacco free of tax (sec. 2101); to issue regulations requiring cigar and cigarette labels to show taxes paid (sec. 2111); to issue regulations on the destruction of forfeited tobacco (sec. 2100); to determine margarine substances subject to tax and deleterious to health (sec. 2811); to require persons to file returns, furnish information and keep records (sec. 3603); and to sanction tax suits (sec. 3740).

Each collector is authorized by section 3990 of the Internal Revenue Code to appoint as many deputies as he thinks proper and to revoke their appointments. These powers were transferred to the Secretary of the Treasury by section 404 of Reorganization Plan No. II, May 3, 1939. Deputy collectors are compensated by such allowances as the Secretary provides upon the recommendation of the Commissioner. If a collector is sick or absent, the senior deputy performs his functions, and if there is a vacancy he discharges the collector's functions until a successor is appointed. All deputies continue to act until a new collector is appointed to fill a vacancy.

The Commissioner has authority under section 4000 of the Internal Revenue Code to appoint internal revenue agents and to assign them to duty under the direction of any officer of the Bureau or such special duties as he deems necessary. The appointment power was transferred to the Secretary in 1939 by Reorganization Plan No. II.

Bonded storekeeper-gaugers are appointed by the Secretary under section 4010 of the Internal Revenue Code. They are paid annual salaries and traveling expenses. One or more must be assigned by the Commissioner to every internal revenue bonded warehouse. Whenever storekeeper-gaugers are not employed upon their regular duties, they may be assigned to such duties as the Commissioner shall designate.

D. Civil Service Status of Employees.

None of the officials appointed by the President with the advice and consent of the Senate are civil service employees. These include the Commissioner, the two Assistant Commissioners, the Special Deputy Commissioner, the Assistant General Counsel for the Bureau of Internal Revenue and all collectors of internal revenue.

Under the terms of the Overman Act of 1918 deputy collectors of internal revenue were not covered by the civil service laws, and by 1939 practically all of the positions in the offices of the collectors were classified as deputy collectors. Accordingly, there were very few civil service employees on the collectors' staffs. The employees of the internal revenue agents on the other hand are almost entirely civil service employees. In 1934 the Civil Service Commission contended that clerks and other employees in the offices of collectors should not be deputy collectors appointed outside the civil service. The Commissioner argued that the practice of the collectors was authorized by the Overman Act. On September 13, 1934 Mr. Oliphant, then General Counsel of the Treasury, wrote an opinion in which he concluded that it was not the intention of Congress that clerical help in collectors' offices be appointed deputy collectors, and thus be exempted from civil service requirements. It is not known what action resulted from this opinion of the General Counsel.

In 1940 Congress authorized the President to issue executive orders covering into the classified civil service any offices or positions in the Executive Branch of the Government with certain specified exceptions. There were no exceptions affecting the Bureau of Internal Revenue, except that the executive orders could not affect officials appointed by the President with the advice and consent of the Senate.

On April 23, 1941 the President issued Executive Order 8743, which covered into the classified civil service all Government employees not so covered, with certain stated exceptions. Positions excepted from the classified civil service under Schedules A and B of the Civil Service Rules were not covered by the Executive Order. These schedules make only one reference to employees of the Bureau of Internal Revenue, which is as follows:

> "* * * special employees for temporary detective work in the field service of the Bureau of Internal Revenue under the appropriation for detecting and bringing to trial and punishment persons violating the internal revenue laws. Appointments under this paragraph shall be limited to persons whose services are required because of individual knowledge of violations of the law, and such appointments shall be continued only so long as the personal knowledge possessed by the appointee of such violation makes his services necessary.* * *"

Accordingly, all positions in the Bureau of Internal Revenue, including deputy collectors, are now covered into the classified civil service with the exception of those officials appointed by the President with the consent of the Senate.

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