

or sale, whether entitling the holder in any manner to the benefit of such stock or not, on each \$100 of face value or fraction thereof, 2 cents, and where such shares of stock are without par value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share, unless the actual value thereof is in excess of \$100 per share, in which case the tax shall be 2 cents on each \$100 of actual value or fraction thereof. * * *

(1) The tax on the issue of capital stock attaches to the issue of certificates of stock representing stock never before issued, no matter when authorized. If a corporation issues preferred stock in place of common, or one kind of preferred stock in place of another kind of preferred stock, or stock without par value in place of stock with par value, the tax applies, even though the total outstanding stock is not thereby increased. The tax applies to the issue of certificates of shares in so-called Massachusetts trusts and other unincorporated associations. The tax does not apply to the issue of voting trust certificates representing stock certificates already issued, nor to the mere issue of new certificates in place of old certificates for stock previously outstanding.

(2) The tax on the transfer of capital stock attaches to sales or transfers of stock, whether or not represented by certificates. It applies to the transfer of stock to or from voting trustees or other trustees, to the transfer of voting trust certificates, to the transfer of shares in so-called Massachusetts trusts and other unincorporated associations, to the transfer of the right to receive a stock dividend already declared, and to the transfer of the interest of a subscriber for stock, however such interest may be evidenced or conditioned upon further payments. The tax does not apply to the transfer of "rights" to subscribe for stock, prior to exercise of the right and actual subscription. It does not apply to the surrender of certificates in exchange for other certificates representing the same or new stock, provided they are issued to the same holder, nor to the surrender of stock certificates for retirement and redemption for cash. If, however, the corporation buys some of its own stock and transfers it to itself, whether or not it intends eventually to cancel it, the transfer to the corporation is subject to the tax. The test is whether the immediate transaction results in the extinction of the stock or in vesting title to it in the corporation.

The following instances of the application of these principles are illustrative:

(3) The tax on the issue of capital stock attaches to the issue of preferred and common stock, whether or not exchanged for old stock, upon a reorganization of a corporation under section 24 of the New York stock corporation law for the purpose of issuing stock without par value, but the tax on transfers of stock is inapplicable to the surrender of old stock in exchange for new stock pursuant to such reorganization.

(4) The tax on the issue of capital stock attaches to the issue of stock of either corporation in addition to its already existing stock upon a merger of trust companies under sections 487-496 of the New York banking law, but the tax on transfers of stock does not attach to the exchange of stock certificates of the merged corporation for stock certificates of the merging corporation at the time and as part of the statutory merger, and neither tax attaches to the substitution of new certificates for certificates representing old stock of the merging corporation. Where, however, as under section 15 of the New York stock corporation law providing for the merger of ordinary corporations, the acquisition of the stock of the corporation to be merged is a condition precedent to the merger, then the transfer of such stock to the merging corporation prior to the actual merger is taxable.

(5) The issue of stock by a consolidated corporation in exchange for the stock of the consolidating corporations is a taxable original issue, but the surrender of the stock of the consolidating corporations in exchange for stock of the consolidated corporation is not a taxable transfer.

(6) The tax, whether on issue or on transfer, is measured not by the amount paid in, on, or for the stock, but by the face or par value, in the case of shares having a face or par value, and by the actual value determined by the market price or otherwise in the case of shares having no face or par value, but an actual value in excess of \$100 a share.

See, generally, regulations No. 40.

DANIEL C. ROPER,
Commissioner of Internal Revenue.

Approved August 14, 1918:

L. S. ROWE,
Acting Secretary of the Treasury.

(T. D. 2753.)

Excise taxes.

Tax on boats—Time for return and payment—Boats subject—Meaning of "for trade."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To collectors of internal revenue and others concerned:

Section 603 of the act of October 3, 1917, provides:

SEC. 603. That on the day this act takes effect, and thereafter on July first in each year, and also at the time of the original purchase of a new boat by a user, if on any other date than July first, there shall be levied, assessed, collected, and paid upon the use of yachts, pleasure boats, power boats, and sailing boats, of over five net tons, and motor boats with fixed engines, not used exclusively for trade or national defense, or not built according to plans and specifications approved by the Navy Department,