COMPUTATION OF YOUR 1953 U. S. Corporation Excess Profits Tax on Schedule EP (Form 1120)

GENERAL INSTRUCTIONS

A. GENERAL STATEMENT.—The excess profits tax is imposed on corporations and is applicable to taxable years ending after June 30, 1950. The normal tax, surtax, and excess profits tax on corporations are to be reported on the corporation income tax return (Form 1120) and are treated as one tax for all purposes, including assessment, collection, payment, period of limitations, and the consolidated return privilege.

A corporation with excess profits net income of $25,000 or less, is, in general, not liable for an excess profits tax although it may be required to file Schedule EP (Form 1120), which is provided for the computation of excess profits net income and excess profits tax. Schedule K on Form 1120 provides a test by which a corporation may determine whether it is required to file Schedule EP (Form 1120) for the taxable year. In the event that such test discloses that a corporation is required to file, Schedule EP (Form 1120) shall be filed with, and as a part of, its return on Form 1120.

B. CORPORATIONS WHICH MUST FILE SCHEDULE EP (FORM 1120).—(1) General rule.—Every corporation (except an exempt corporation described in (2), below) required by section 52 to make an income tax return must file with, and as a part of, such return a Schedule EP (Form 1120) unless the amount shown on line 8, Schedule K on Form 1120, is $25,000 or less. However, see specific instruction 29 and 30, Schedule EP–1, for cases in which the filing of Schedule EP (Form 1120) may be required even though the amount on line 8, Schedule K, on Form 1120 is $25,000 or less.

(2) Exempt corporations.—The following corporations, except as otherwise provided with respect to members of an affiliated group of corporations filing a consolidated return under section 141, are exempt from the excess-profits tax:

(*a*) Corporations exempt from tax under section 101 (whether or not subject to tax under Supplement U);

(*b*) Foreign personal holding companies as defined in section 331;

(*c*) Regulated investment companies as defined in section 361 without the application of section 361 (b) (4);

(*d*) Personal holding companies as defined in section 501;

(*e*) Foreign corporations not engaged in trade or business within the United States;

(*f*) Domestic corporations satisfying the following conditions:

(1) 95 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States, and

(2) 50 percent or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business:

(*g*) Any corporation subject to the provisions of Title IV of the Civil Aeronautics Act of 1938 in the gross income of which, for the taxable year for which the return is being filed, there is includible compensation received from the United States for the transportation of mail by aircraft if, after excluding from its gross income such compensation, its adjusted excess profits net income for such year is zero or less.

A corporation which claims exemption from excess profits tax under paragraphs (*b*), (*c*), or (*e*), above, shall file with its return a statement setting forth the facts upon which it relies.

A corporation which claims exemption from excess profits tax under paragraph (*f*), above, shall attach to its return a statement showing for the 3-year period immediately preceding the close of the taxable year (or for such part thereof during which the corporation was in existence) (1) its total gross income from all sources, (2) the amount thereof derived from the active conduct of a trade or business, (3) a description of such trade or business and the facts upon which the corporation relies to establish that such trade or business was actively conducted by it, and (4) the amount of its gross income from sources within the United States. The gross income from sources within the United States shall be determined as provided in section 119 and the provisions of the regulations relating thereto.

A corporation which claims exemption from excess profits tax under paragraph (*g*), above, shall attach to its return a statement showing (1) that it is subject to the provisions of Title IV of the Civil Aeronautics Act of 1938, (2) the amount of the compensation included in the gross income of the corporation that consists of compensation received from the United States for the transportation of mail by aircraft, and (3) the amount of its gross income, net income, excess profits net income, and adjusted excess profits net income, after excluding from its gross income the amount of such compensation. Such exclusion from gross income for such year shall also be made in computing the unused excess profits credit adjustment for any other taxable year, but only for the purpose of determining whether the corporation is exempted by section 454 from excess profits tax for such other taxable year.

(*h*) Any mutual savings bank not having capital stock represented by shares; any domestic building and loan association, domestic saving and loan association, or Federal savings and loan association, substantially all the business of which is confined to making loans to members; and any cooperative bank without capital stock organized and operated for mutual purposes and without profit.

C. CONSOLIDATED RETURNS.—(1) Privilege to file consolidated income tax (including excess profits tax) return.—Section 141 gives to an affiliated group of corporations the privilege of making a consolidated return in lieu of separate returns. See 1953 instructions for Form 1120.

Paragraphs (7) and (8) of section 141 (e) relate to the definition of "includible corporation." Paragraph (7) excludes from the definition of "includible corporation" a personal service corporation, a personal holding company, certain domestic corporations deriving 95 percent or more of their gross income from sources without the United States, and certain corporations transporting mail by aircraft, unless such corporation has filed a consent to be treated as an includible corporation. Paragraph (8) excludes from the definition of "includible corporation" a regulated public utility entitled to compute its excess profits credit under section 448, unless such public utility has filed a consent to compute its excess profits credit without regard to section 448.

An affiliated group of corporations, all the members of which are regulated public utilities, may nevertheless file a consolidated return, provided that each such utility has made and filed a consent to compute its excess profits credit under section 448 only.

D. PERSONAL SERVICE CORPORATIONS.—(1) Taxation of personal service corporations.—A personal service corporation is subject to the excess profits tax the same as any other domestic corporation unless it elects not to be subject to such tax. A new election must be made for each taxable year and may be made only in its return for such year. Such an election may not be exercised by a corporation which is a member of an affiliated group of corporations filing a consolidated return. If a corporation is exempt by reason of the exercise of such an election, the provisions of Supplement S (sections 391 through 396) shall apply to the shareholders who were shareholders on the last day of the taxable year of the corporation. Accordingly, the undistributed Supplement S net income is required to be included in the gross income of the persons who were shareholders on such last day. The amount of the undistributed Supplement S net income shall be considered as paid in to the corporation as of the close of the taxable year as paid-in surplus or as a contribution to capital, and the amount of accumulated earnings and profits as of the close of the year shall be correspondingly reduced if such amount or any portion thereof is required to be included as a dividend in the gross income of the shareholder.

(2) Definition of personal service corporation.—The term "personal service corporation" means a domestic corporation in which capital is not a material income-producing factor and the

income of which is to be ascribed primarily to the activities of shareholders who (*a*) are regularly engaged in the active conduct of the affairs of the corporation and (*b*) are the owners, throughout the entire taxable year, of at least 70 percent in value of each class of stock of the corporation. If stock is owned by the spouse or minor child of an individual or owned by the guardian or trustee of such spouse or child, such stock is treated as being owned by such individual.

If 50 percent or more of the gross income of a corporation consists of gains, profits, or income derived from trading as a principal, such corporation cannot be considered to be a personal service corporation. As to corporations in which less than 50 percent of the gross income is derived from trading as a principal, see instructions for Schedule PS (Form 1120).

(3) Returns.—A personal service corporation should obtain Schedule PS (Form 1120) from the director and file it with, and as a part of Form 1120.

E. SPECIAL METHODS FOR COMPUTING INCOME.—(1) Installment basis taxpayers.—Section 455 provides that a corporation which reports income on the installment basis, or whose principal business consists of purchasing installment sales obligations, may elect in its return for the purpose of excess profits tax to compute its income from installment sales, or installment sales obligations, on the basis of the taxable period for which such income is accrued. The election shall be made by a statement attached to the return or by the use of figures on the return which clearly reflect the election. The election is irrevocable and applies to all taxable years to which the excess profits tax is applicable. If the corporation so elects, the income from installment sales, or installment sales obligations, for each taxable year subject to the excess profits tax will, for the purpose of computing the excess profits tax for all taxable years (including prior taxable years), be adjusted to conform to such election. No amount will be included, however, in computing excess profits net income for any excess profits tax taxable year on account of installment sales made in a taxable year ending before July 1, 1950. For conforming adjustments to income for taxable years in the base period, see section 433 (b) (7); for adjustment in determining invested capital, the net new capital addition, the base period capital addition, and the net capital addition or reduction, see section 441 (h).

(2) Corporations with income from long-term contracts.—Any corporation computing income from contracts the performance of which requires more than 12 months may elect in its return for the taxable year, for the purpose of the excess profits tax, to compute such income upon the percentage of completion method of accounting. The election shall be made by a statement attached to the return or by the use of figures on the return which clearly reflect the election. The election is irrevocable and applies to all taxable years to which the excess profits tax is applicable. If the corporation so elects, the income from long-term contracts for each year subject to the excess profits tax will, for the purpose of computing the excess profits tax for all taxable years (including prior taxable years), be adjusted to conform to such election. For conforming adjustments to income for taxable years in the base period, see section 433 (b) (8); for adjustment in determining invested capital, the net new capital addition, the base period capital addition, and the net capital addition or reduction, see section 441 (h).

F. DEALERS IN CERTAIN GOVERNMENT SECURITIES.—Section 440 (c) provides, in general, that dealers in Government securities which are wholly or partially exempt from tax, may elect to include the interest on such securities in excess profits net income and to treat such Government obligations as admissible assets rather than inadmissible assets for the purpose of computing the invested capital credit and for computing the amounts of capital additions or reductions. Such election may be made for any taxable year by a statement attached to the return for such year or by the use of figures on the return which clearly reflect the election.

G. EXCESS PROFITS CREDIT.—There are three different credits available for computing the excess profits tax: (*a*) The credit based on income (including the provisions of sections 442 through 446 and section 459; (*b*) the credit based on invested capital; and (*c*) in the case of certain regulated public utilities, the credit provided in section 448. The taxpayer is to use that credit which produces the lowest excess profits tax. For computation of (*a*) the credit based on income, see Schedule EP–2; (*b*) the credit based on invested capital, see Schedule EP–4; and (*c*) the credit provided in section 448, see Schedule EP–3.

H. RULES FOR DETERMINING CREDIT IN CASE OF CERTAIN REORGANIZATIONS, LIQUIDATIONS, AND TAXABLE ACQUISITIONS.—(*a*) Credit based on Income.—(1) *Reorganizations and certain tax-free liquidations.*—Sections 461 through 465 provide rules for determining the credit based on income in the case of a corporation (other than a foreign corporation) which during or subsequent to the base period was a party to any of the transactions described in section 461 (a), relating to certain tax-free exchanges. In general, it is provided that such a corporation shall, if a component corporation as defined in section 461 (b), compute its average base period net income under the rules laid down in section 461 (c) and (d). If, however, such a corporation is an acquiring corporation as defined in section 461 (a), the rules for determining average base period net income, and the conditions under which sections 435 (e), 442, 443, 444, 445, and 446 may be available to the corporation are set forth in sections 461 and 462. In the case of certain of these transactions, the application to the acquiring corporation of the provisions relating to capital changes subsequent to the base period and capital changes in the base period is determined by reference to sections 463 and 464. For the effect of the above rules where stock of the component corporation was acquired for other than stock of the acquiring corporation, see section 462 (j). The circumstances under which transactions involving partnerships and sole proprietorships are subject to these provisions are set forth in sections 461 (b) (5) and (6), 461 (f), and 462 (k).

(2) *Taxable acquisitions.*—Section 474 provides rules for determining the credit based on income in the case of a corporation which before December 1, 1950, purchased substantially all of the assets of another corporation or partnership or substantially all the assets of a business of another corporation, partnership, or sole proprietorship. In general, it is provided that such a corporation, if a purchasing corporation as defined in section 474 (a), may compute its average base period net income under the method prescribed in section 435 (d) with reference to the excess profits net income of the corporation, partnership, or business owned by a sole proprietorship which was purchased. Section 474 also provides limitations on the availability of the benefits of the section, and provides for regulations for the determination of capital changes, for the elimination of duplication, and for other computations consistent with the principles of sections 461 through 465, inclusive, wherever appropriate.

(*b*) Invested capital.—For the purposes of computing invested capital (other than historical invested capital), section 470 provides rules to be used in determining the adjusted basis of assets acquired in an intercorporate liquidation. Adjustments with respect to historical invested capital, in the case of certain exchanges and liquidations, are contained in sections 471 and 472.

SPECIFIC INSTRUCTIONS

The following instructions are numbered to correspond with line numbers on each schedule

SCHEDULE EP–1—EXCESS PROFITS NET INCOME AND TAX COMPUTATION

EXCESS PROFITS NET INCOME

1. Net income before net operating loss deduction.—Enter the amount which appears in item 32, page 1, Form 1120. In the case of a corporation electing to report income from installment sales, or installment sales obligations on the accrual method, or income from long-term contracts on the percentage of completion method, recompute net income accordingly and enter such amount on line 1. For explanation of the adjustment necessary, see general instruction E (1) and (2).

2. Adjustment for interest on borrowed capital.—The adjustment on line 2 adds back the amount computed under (*a*) or (*b*) below, whichever is appropriate upon the basis of the excess profits credit applicable to the taxable year. No adjustment is required on this line by a regulated public utility computing its excess profits credit under section 448.

(*a*) Income credit.—In general, section 433 (a) (1) (O) adds back an amount which bears the same ratio to the total interest on borrowed capital as 75 percent of the net increase in borrowed capital bears to the average borrowed capital for the taxable year. This computation may be made by multiplying the total amount of interest on borrowed capital for the taxable year by the excess of the amount on line 7 of Schedule EP–2 (B) over the amount on line 13, Schedule EP–2 (B), and dividing the result by the amount on line 4, Schedule EP–2 (B).

(*b*) Invested capital credit.—Section 433 (a) (1) (N) adds back an amount which is 75 percent of the interest on borrowed capital.

3. Deductions on account of retirement or discharge of bonds, etc.—If during the taxable year the taxpayer retires or discharges any bond, debenture, note, or certificate, or other evidence of in-

debtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, the following deductions for such taxable year shall not be allowed:

(*a*) The deduction allowable under section 23 (a) for expenses paid or incurred in connection with such retirement or discharge;

(*b*) The deduction for losses allowable by reason of such retirement or discharge; and

(*c*) In case the issuance was at a discount, the amount deductible for such year solely because of such retirement or discharge.

In making this adjustment, the deduction allowable for any premium paid on bonds when called for redemption shall be disallowed, but the deduction allowable for any discount amortized up to the date of the retirement or discharge shall not be disallowed. Expenses incurred in issuing bonds which are amortized shall be treated in the same manner as discounts.

4. Deductions attributable to a grant or loan by a governmental agency to encourage mining of certain minerals.—The adjustment on line 4 is the sum of any expenditures described below deducted in arriving at the amount on line 1. The adjustment on line 21 is the amount of any income described below included in computing line 1.

Section 433 (a) (1) (P) provides that an amount paid to a taxpayer by the United States (or any agency or instrumentality thereof), whether by grant or loan and whether or not repayable, for the encouragement of exploration, development, or mining of critical and strategic minerals or metals pursuant to or in connection with any undertaking approved by the United States (or any of its agencies or instrumentalities) and for which an accounting is made or required to be made to an appropriate governmental agency, and the forgiveness or discharge of any such amount, shall be excluded in computing excess profits net income; and any expenditures (other than expenditures made after the repayment of such grant or loan) attributable to such grant or loan shall not be deductible by the taxpayer as an expense and shall not increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition or for computing depletion or depreciation, but upon the repayment of any portion of such grant or loan which has been expended in accordance with the terms thereof such deductions and such increase in basis shall to the extent of such repayment be allowed as if made at the time of such repayment.

5. Deductions under reserve method for bad debts, in the case of banks.—The adjustment on line 5 is the addition to the bad debt reserve deducted in arriving at the amount on line 1. The adjustment on line 19 is the amount of those debts which actually became worthless during the taxable year.

Section 433 (a) (1) (L) provides that in the case of a bank (as defined in section 104) using the reserve method of accounting for bad debts, there shall be allowed, in lieu of the amount allowable under the reserve method for bad debts, a deduction for debts which became worthless within the taxable year, in whole or in part, within the meaning of section 23 (k).

6. Federal income and excess profits taxes paid by lessee under long-term lease.—The adjustment on line 6 is to disallow the deduction by a lessee of an amount of Federal income taxes paid on behalf of a lessor. The adjustment on line 18 is to exclude this amount from income in the case of a lessor.

If under a lease for a term of more than 20 years, entered into prior to December 1, 1950, the lessee is required to pay any portion of the tax imposed by chapter 1 upon the lessor with respect to the rentals derived by such lessor from such lessee, or is obligated to reimburse the lessor for any portion of the tax imposed by chapter 1 upon the lessor with respect to the rentals derived by such lessor from such lessee, such payment or reimbursement of the tax imposed by chapter 1 shall be excluded by the lessor and a deduction therefor shall not be allowed to the lessee. For treatment of certain leases of railroad properties containing renewal clauses, see section 433 (a) (1) (K).

7. Deductions attributable to technical services rendered to related foreign corporations.—The adjustment on line 7 is the sum of any expenditures described below deducted in arriving at the amount on line 1. The adjustment on line 22 is the amount of any income described below included in computing line 1.

Section 433 (a) (1) (R) provides that in the case of a domestic corporation which renders to a related foreign corporation technical assistance, engineering services, scientific assistance, or similar services (such services or assistance being related to the production or improvement of products of the type manufactured by such domestic corporation), there shall be excluded the remuneration for such services or assistance if such remuneration constitutes income derived from sources without the United States. Any deductions in connection with or properly allocable to the rendering of such services or assistance shall not be allowed. For this purpose, a foreign corporation shall be considered a "related foreign corporation" if 10 percent or more of its outstanding stock is owned by the domestic corporation.

8. Adjustment for interest on certain Government obligations.—Section 433 (a) (1) (S) provides that, in the case of a dealer in certain Government obligations which makes the election provided by section 440 (c), the excess profits net income shall be increased by the excess of the amount of interest received or accrued on such obligations during the taxable year over the sum of (*a*) the amount of interest paid or accrued during such year which is not allowed as a deduction under section 23 (b), and (*b*) the amount of the adjustments required for the taxable year under section 22 (o) (relating to the adjustment for certain bond premiums) but not in excess of the amount of interest received or accrued during the taxable year on Government obligations to which such section is applicable. For this purpose, the term "Government obligations" means obligations described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income; but such term shall include only such obligations as in the hands of the taxpayer are property described in section 117 (a) (1) (A).

10. Partially tax-exempt interest.—Enter on this line the sum of the amounts reported on lines (a) and (b), column 3, Schedule C–1, Form 1120. The purpose of this adjustment is to exclude from excess profits net income interest on certain obligations of the Government.

11. Dividends received.—The purpose of this adjustment is to exclude dividends, except dividends (actual or constructive) on stock of foreign personal holding companies and dividends on stock which is not a capital asset. In the case of a dividend in kind, the amount to be excluded shall not exceed the adjusted basis of the property so distributed in the hands of the distributing corporation at the time of the distribution, increased in the amount of gain or decreased in the amount of loss recognized to the distributing corporation by reason of such distribution.

12. Net operating loss deduction for excess profits tax purposes.—The amount to be entered on line 12, is the amount of the net operating loss deduction otherwise prescribed in sections 23 (s) and 122, computed in accordance with the following modifications as provided in section 433 (a) (1) (J):

(a) In computing the net operating loss for any taxable year under section 122 (a) and the net income for any taxable year under section 122 (b), the deduction for interest shall be reduced by the amount of any reduction under section 433 (a) (1) (N) or (O) (relating to interest adjustment with respect to borrowed capital), whichever is applicable upon the basis of the excess profits credit for such taxable year; and

(b) In lieu of the reduction provided in section 122 (c), such reduction shall be in the amount by which the excess profits net income computed with the exceptions and limitations specified in section 122 (d) (1), (2), (3), and (4), and computed without regard to section 433 (a) (1) (C) (relating to gains and losses from sale or exchange of capital assets), without regard to any credit for dividends received, and without regard to any credit for interest received provided in section 26 (a) (relating to interest on obligations of the United States and its instrumentalities), exceeds the excess profits net income (computed without the net operating loss deduction); and

(c) If the taxpayer for its first taxable year ending after June 30, 1950, computed its excess profits credit under section 435 (relating to the excess profits credit based on income) or section 436 (a) by use of the historical invested capital determined under section 458, and elected in its return (by a statement attached thereto) for such taxable year to compute its net operating loss deduction for the purposes of section 433 (a) (1) (J) for all taxable years by treating an amount equal to the base period loss adjustment (as defined in clause (d)) as a net operating loss carry-over from the last taxable year ending before July 1, 1950, then the net income computed under section 122 (b) for any taxable year ending before July 1, 1950, shall be determined without regard to such carry-over;

(d) For the purposes of clause (c), the base period loss adjustment shall be the amount of the recent loss adjustment determined under section 437 (f), using the base period as the recent loss period, and computed by limiting the amount of the net operating loss for any taxable year beginning before January 1, 1948, to an amount equal to the net operating loss carry-over from such taxable year to the taxable year immediately succeeding such taxable year; and

(e) If the taxpayer has made the election described in clause (c), the net operating loss deduction for the purposes of section 433 (a) (1) (J) for each taxable year ending after June 30, 1950 (whether or not the credit for such taxable year is computed under section 435), shall be computed without regard to the net operating loss for any taxable year ending before July 1, 1950, and the net operating loss carry-over specified in clause (c) shall not be allowed as a net operating loss carry-over to any taxable year for which the excess profits credit is not computed under section 435 (relating to the excess profits credit based on income) and is not

computed under section 436 (a) by use of the historical invested capital determined under section 458.

13. **Net gain from sale or exchange of capital assets.**—Section 433 (a) (1) (C) provides for the exclusion of gains and losses from sales or exchanges of capital assets. Accordingly, the amount to be entered on line 13 is the sum of items 13 (*a*) and 13 (*b*), page 1, Form 1120.

14. **Income from retirement or discharge of bonds, etc.**—Section 433 (a) (1) (D) provides for the exclusion of income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for the taxable year solely because of such retirement or discharge. Do not exclude the accrued amortization of bond premium for that portion of the year preceding such retirement or discharge.

15. **Refunds and interest on Agricultural Adjustment Act taxes.**—Section 433 (a) (1) (E) provides for the exclusion of income attributable to a refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon any such refund.

16. **Income from recovery of certain bad debts.**—Section 433 (a) (1) (G) provides for the exclusion of income attributable to the recovery of a bad debt if the deduction of such debt was allowable from gross income for any taxable year beginning before January 1, 1940, or for any taxable year beginning after December 31, 1945, and ending before July 1, 1950, or if such debt was properly charged to a reserve for bad debts during any such taxable year.

17. **Nontaxable income of certain industries with depletable resources.**—Sections 433 (a) (1) (I) and 453 provide that in the case of a producer of minerals, or a producer of logs or lumber from a timber block, or a lessor of mineral property, or if a timber block, there shall be excluded nontaxable income from exempt excess output of mines and timber blocks; in the case of a natural gas company, there shall be excluded nontaxable income from exempt excess output; and, in the case of a producer of minerals or a producer of logs or lumber from a timber block, there shall be excluded nontaxable bonus income. A corporation described in section 453 (c) (2) shall be deemed a producer of minerals with respect to nontaxable bonus income.

The election under section 453 (d) made by a taxpayer receiving income attributable to bonus payments (section 453 (c)) shall be indicated in the supporting statement attached to the return.

18. **Federal income and excess profits taxes received by lessor under long-term lease.**—See instruction 6.

19. **Debts which actually became worthless during the year, in case of banks.**—See instruction 5.

20. **Adjustment for blocked foreign income.**—Section 433 (a) (1) (M) provides for the exclusion of income derived from sources within any foreign country to the extent that such income would, but for monetary, exchange, or other restrictions imposed by such foreign country, have been includible in the gross income of the taxpayer for any taxable year which preceded its first taxable year ended after June 30, 1950. Where such income is includible (without regard to section 433 (a) (1) (M)) in a taxable year succeeding the first taxable year ended after June 30, 1950, and, but for such restrictions, would have been includible in the gross income of the taxpayer for its first taxable year ended after June 30, 1950, the exclusion provided, in case such first taxable year began prior to July 1, 1950, shall be reduced to an amount which is the same proportion of the blocked income as the number of days in such taxable year prior to July 1, 1950, is of the total number of days in such taxable year. Deductions properly chargeable and allocable to such income shall not be allowed.

21. **Income attributable to a grant or forgiveness of a loan by a governmental agency to encourage mining of certain minerals.**—See instruction 4.

22. **Income attributable to technical services rendered to related foreign corporations.**—See instruction 7.

25. **Deductions applicable to life insurance companies.**—Section 433 (a) (1) (H) provides that, in the case of a life insurance company computing its excess profits credit under section 435 (based on income), there shall be deducted from the normal-tax net income the excess of (*a*) the product of (1) the figure 0.87 and (2) the excess profits net income computed without regard to section 433 (a) (1) (H) over (*b*) the adjustment for certain reserves provided in section 202 (c). If the excess profits credit is computed under section 436 (based on invested capital), there shall be deducted from the normal-tax net income only 50 percent of the amount determined under the preceding sentence.

26. **Excess profits net income—short taxable years.**—Section 433 (a) (2) provides that, in lieu of the provisions of section 47 (c), if the taxable year is a period of less than 12 months, the excess profits net income for such taxable year (referred to in this paragraph as the "short taxable year") will be placed on an annual basis by multiplying the amount thereof by the number of days in the 12 months ending with the close of the short taxable year and dividing by the number of days in the short taxable year. The excess profits tax will be such part of the tax computed on such annual basis as the number of days in the short taxable year is of the number of days in the 12 months ending with the close of the short taxable year. (See also section 433 (a) (2) (B).)

TAX COMPUTATION

27. Excess profits credit.—

(*a*) **In general.**—In the case of a domestic corporation, the excess profits credit for any taxable year is the amount determined under section 435 (relating to excess profits credit based on income) or the amount determined under section 436 (relating to excess profits credit based on invested capital) whichever amount results in the lesser excess profits tax for the taxable year. For computation of excess profits credit based on income, see Schedule EP–2 and instructions. For computation of credit based on invested capital, see Schedule EP–4 and instructions. For computation of alternative credit in case of certain regulated public utilities, see Schedule EP–3 and instructions.

(*b*) **Railroad lessor-lessee corporations.**—If substantially all the railroad properties of a railroad corporation subject to Part I of the Interstate Commerce Act have been leased for a term of more than 20 years to another such railroad corporation pursuant to an agreement or agreements entered into prior to December 1, 1950, which agreement or agreements require the lessee or lessees to pay the taxes of the lessor, the aggregate of the excess profits credit and the unused excess profits credit adjustment of each such corporation may be equitably apportioned by agreement, if approved in accordance with regulations prescribed by the Secretary, among the lessor and each of the lessee corporations so required to pay the taxes of the lessor. The term of a lease of railroad properties entered into prior to December 1, 1950, shall include the years for which such release may be renewed or continued. See section 434 (d).

(*c*) **Section 459. Miscellaneous provisions.—In general.**—Section 459 provides special computations of average base period net income in the case of taxpayers meeting certain eligibility requirements with respect to (1) transition from war production and increase in peacetime capacity, (2) base period catastrophe, (3) consolidation of newspaper operations, (4) television broadcasting companies, and (5) preserving defense capacity and increasing capacity for manufacturing peacetime products from certain strategic and critical metals. There is no separate schedule provided for computation of average base period net income under section 459. A taxpayer computing average base period net income under any provision of this section shall attach to its return a schedule showing the computation of such average base period net income and in the case of a taxpayer computing a credit by reference to section 459 (d) any adjustments to the capital additions or reductions required under that section. The taxpayer shall also submit with its return a full and complete statement showing the basis upon which each requirement of the particular subsection of section 459 is satisfied and all the facts upon which the taxpayer relies. For definition of adjusted basis and unadjusted basis as used in section 459, see section 459 (e).

(1) *Transition from war production and increase in peacetime capacity.*—Section 459 (a) provides for computation of an alternative average base period net income in the case of a taxpayer engaged primarily in manufacturing and which commenced business before January 1, 1940. In general, the taxpayer must establish that—

(i) the adjusted basis of its facilities at the beginning of its base period (including the facilities of all members of the taxpayer's affiliated group) did not exceed $10,000,000;

(ii) the unadjusted basis of its facilities at the end of its base period was 250 percent or more of the unadjusted basis of its facilities at the beginning of its base period;

(iii) the taxpayer's gross income derived from certain contracts with the United States and related subcontracts constituted (A) at least 70 percent for certain years during World War II, (B) less than 20 percent for certain years ending after 1945;

(iv) the average monthly excess profits net income for taxable years ending in the last half of its base period and for the taxable year immediately preceding the base period are each 300 percent or more of the average monthly excess profits net income for the taxable years ending in the first half of the base period.

If section 459 (a) is applicable, the taxpayer may compute its average base period net income under section 435 (e) (2) (G) (i) and (ii) using lines 44 through 48 and lines 52 through 56 of Schedule EP–2 as a guide but substituting the excess profits net income of the last 6 months of 1948 in lieu of the excess profits net income for the last 6 months of 1949 on line 45. If the aver-

age base period net income is computed under section 459 (a), no base period capital addition is allowed.

(2) *Base period catastrophe.*—Section 459 (b) provides two alternative methods of computing the average base period net income which are, in general, available to a taxpayer, engaged primarily in manufacturing, which suffered a catastrophe by fire, storm, explosion, or other casualty during the last 36 months of its base period which destroyed or rendered inoperative a production facility constituting a complete plant or plants having an adjusted basis equal to 15 percent or more of the adjusted basis of all the taxpayer's production facilities. The taxpayer's normal production or operation must have been interrupted for a period of more than 12 consecutive months as a result of such catastrophe, and such production facility replaced prior to the end of its base period.

If section 459 (b) is applicable, the taxpayer may compute its average base period net income using whichever of the following methods results in the lesser excess profits tax:

(i) the average base period net income may be computed under section 435 (d) (relating to the general average method) by substituting for the excess profits net income for each month in the taxable year in which the catastrophe occurred an amount equal to the aggregate, divided by the number of months in the base period preceding such taxable year, of the excess profits net income for each month (computed under section 435 (d) (1)) in the base period preceding such taxable year. A taxpayer computing its average base period net income in this manner should use lines 33 through 38 and lines 49 through 56 of Schedule EP–2, and should enter on line 33 (a) of Schedule EP–2 for the year in which the catastrophe occurred an amount computed by aggregating the excess profits net income as shown on line 33 (a) for each month in the base period preceding such taxable year and dividing such aggregate by the number of months in the base period preceding such taxable year.

(ii) the taxpayer may compute its average base period net income under section 435 (e) (2) (G) (i) and (ii) using lines 44 through 48 and lines 52 through 56 of Schedule EP–2 as a guide but substituting on line 45 of Schedule EP–2 the excess profits net income for the last 6 months of 1948 in lieu of the excess profits net income for the last 6 months of 1949.

If the average base period net income is computed under (ii), no base period capital addition is allowed.

(3) *Consolidation of newspaper operations.*—Section 459 (c) provides, in general, for a special computation of the average base period net income of a taxpayer engaged primarily in the newspaper publishing business which, after the first half of its base period and prior to July 1, 1950, consolidated its mechanical, circulation, advertising, and accounting operations with such operations of another newspaper in the same area, and such consolidation was continued throughout the taxable year.

The taxpayer must establish that for the period ending with the close of the first taxable year beginning after the consolidation, the consolidation resulted in substantial reductions in expenses paid or incurred in connection with its mechanical, circulation, advertising, and accounting operations, and that either—

(i) the deductions of the taxpayer under section 23 for its first taxable year beginning after the consolidation, computed without regard to the net operating loss deduction and without regard to certain circulation expenditures, were not in excess of 80 percent of the average of such deductions for the two taxable years preceding the taxable year of consolidation, or

(ii) the excess profits net income of the taxpayer, computed under section 433 (b), for the first taxable year beginning after the consolidation was 125 percent or more of the average base period net income computed under section 435 (d).

If section 459 (c) is applicable, the taxpayer may compute an average base period net income by ascertaining the amount under section 435 (d) (line 32 or line 38, EP–2, whichever is applicable) and by adding thereto an amount equal to the excess of the average expenses paid or incurred in the conduct of the newspaper operations during the two taxable years immediately preceding the year of consolidation over the total of such expenses during the first taxable year after the consolidation. In making this determination proper adjustment shall be made for increases in the cost of labor and newsprint (due to wage and price increases) following such consolidation. Proper adjustment shall also be made for any case in which any taxable year used in the computation of the average base period net income is a period of less than 12 months.

The amount computed under this section should be used in lieu of the amount on line 32 or 38 in determining the amount to be entered on line 49 of Schedule EP–2. Lines 53 through 56 should then be completed.

(4) *Television broadcasting companies.*—Section 459 (d) provides an alternative method of computing the income credit in the case of a taxpayer engaged in television broadcasting throughout a period beginning before January 1, 1951, and ending with the close of the taxable year. Under this provision, the average base period net income consists, in general, of the sum of—

(i) an average base period net income, determined under the general average method, for any business of the taxpayer other than the television broadcasting business, and

(ii) an average base period net income for the television broadcasting business determined by applying to the adjusted basis of television assets at the end of the base period either the base period rate of return for the industry classification which includes radio broadcasting or, if the taxpayer was engaged in radio broadcasting during the base period, an "individual rate of return" based on the taxpayer's actual radio broadcasting experience during the base period, whichever rate of return produces the lesser tax.

Special rules are provided for a taxpayer which acquired its television broadcasting business after the close of its base period and before January 1, 1951, for the computation of the base period capital addition and the net capital addition or reduction, and for the avoidance of duplication.

A taxpayer computing its income credit by reference to section 459 (d) should, if it was engaged in any business other than television broadcasting during its base period, determine an average base period net income for such non-television business, using Schedule EP–2 (lines 1 through 38) as a guide. In making this determination, there should be excluded from each item on lines 1 through 30 any income, deductions, losses, or other items attributable to the television broadcasting business. In the case of items such as administrative expenses, depreciation, or other items which may be attributable in part both to the television and non-television business, proper allocation of the item should be made in accordance with regulations.

If the taxpayer was not engaged in the radio broadcasting business during the base period but was engaged in the television broadcasting business during such period, the average base period net income for the television business shall be determined by multiplying the adjusted basis of such portion of its assets, determined as of the last day of the base period, as was attributable to television broadcasting, by the base period rate of return prescribed under section 447 (c) for the industry classification which includes radio broadcasting. The amount thus determined is reduced by such portion of the interest paid or incurred by the taxpayer, for the period of 12 months following the close of the base period, as was attributable to the television broadcasting business.

If the taxpayer was engaged in both the radio and television broadcasting business during the base period, the average base period net income for the television business may be determined either by use of the base period rate of return as described in the preceding paragraph, or by multiplying the adjusted basis of such portion of its assets, determined as of the last day of the base period, as was attributable to television broadcasting, by the taxpayer's individual rate of return. The individual rate of return is computed under section 459 (d) (4), in general, by determining the average of the taxpayer's assets attributable to the radio broadcasting business for the last day of each month in the base period, by ascertaining the average yearly excess profits net income attributable to the radio broadcasting business, and by dividing the average amount of such assets by such excess profits net income.

If the taxpayer acquired its television broadcasting business after the close of its base period and prior to January 1, 1951, the average base period net income for the television business is computed by reference to the adjusted basis of its television properties as of the last day of the calendar month in which it first engaged in such business. If such a taxpayer uses the industry rate of return in lieu of the individual rate of return, the adjustment for interest paid or incurred is made with respect to interest for the 12 months following the month in which it first engaged in the television broadcasting business.

If the average base period net income is determined under section 459 (d), the base period capital addition is available only with respect to the non-television business. Such base period capital addition may be computed using Schedule EP–2 (A) as a guide, but excluding from the entries on that schedule such items as are determined under regulations to be attributable to the television broadcasting business.

A taxpayer using section 459 (d) should compute its net capital addition or reduction on Schedule EP–2 (B), making such adjustments in the computation as may be required by regulations.

If any assets of the taxpayer used in computing the television portion of the credit under section 459 (d) were acquired, directly or indirectly through the use of assets attributable at any time during the base period to the non-television business of the taxpayer, the average base period net income determined for the non-television business shall be properly adjusted by eliminating from the excess profits net income for each month prior to such acquisition, such portion thereof as is attributable to the assets

used for such acquisition. For this purpose, the excess profits net income for any month shall be attributed to such assets on the basis of the ratio, as of the beginning of the day of such acquisition, of such assets to the total non-television assets of the taxpayer.

For application of Part II in the computation of a credit under section 459 (d), see regulations.

For definition of "assets" see instruction 7, Schedule EP–5.

(5) *Companies preserving defense capacity and increasing capacity for manufacturing peacetime products from certain strategic and critical metals.*—Section 459 (f) provides for the computation of an alternative average base period net income in the case of certain taxpayers which commenced business on or before January 1, 1936, and since such date have been primarily engaged in manufacturing. In general, a taxpayer must establish that—

(i) the percentage of its purchases of raw strategic and critical metals was 80 percent or more for each of the taxable years beginning with or within its base period;

(ii) its average monthly excess profits net income, computed as provided in section 443 (e), for the period comprising all taxable years ending with or within the first 24 months of its base period was 250 percent or more of its average monthly excess profits net income, computed as provided in section 443 (e), for the period comprising all taxable years ending with or within the last 24 months of its base period;

(iii) the adjusted basis of its total facilities at the beginning of its base period (including the facilities of all members of the taxpayer's affiliated group) did not exceed $10,000,000; and

(iv) the adjusted basis of its total facilities on the last day of its base period was 180 percent or more of the adjusted basis of its total facilities on the first day of its base period.

For the purpose of section 459 (f), the term "strategic and critical metals" means copper and zinc (including scrap containing such metals).

If section 459 (f) is applicable, the taxpayer may compute its average base period net income under section 435 (e) (2) (E) and (F) using lines 44 through 48 and lines 52 through 56 of Schedule EP–2 as a guide but substituting for the excess profits net income for the last six months of 1949 (line 45) an amount computed by multiplying the excess profits net income for the last six months of 1946 by the percent determined by dividing the adjusted basis of its total facilities on December 31, 1948, by the adjusted basis of its total facilities on the first day of its base period. The average base period net income as so computed is limited, however, to an amount which is not in excess of 80 percent of the excess profits tax net income for its first taxable year ending after June 30, 1950.

If the average base period net income is computed under section 459 (f), no base period capital addition is allowed.

(*d*) Corporations which were parties to certain reorganizations, exchanges, and liquidations and acquisitions.—Rules are provided for the computation of the excess profits credit based on income in the case of certain reorganizations, exchanges, and liquidations. See sections 461 through 465. Sections 470 through 472 contain rules with respect to the computation of the excess profits credit based on invested capital in case of certain reorganizations, exchanges, and liquidations. Section 474 provides rules with respect to the computation of a credit for purposes of section 435 (d) in the case of certain taxable acquisitions occurring before December 1, 1950.

(*e*) Foreign corporations.—A foreign corporation engaged in trade or business within the United States which was in existence on January 1, 1946, may compute its excess profits tax using either the income method or the invested capital method if such corporation's first excess profits tax taxable year began on or before July 1, 1950, and if it was engaged in trade or business within the United States at some time during each taxable year which began or ended in the base period. If a foreign corporation does not meet the foregoing requirements, the excess profits credit for any taxable year must be computed under the invested capital method. See sections 435 and 436 for special rules with respect to the excess profits credit of a foreign corporation.

(*f*) Corporations entitled to the benefits of section 251.—A corporation entitled to the benefits of section 251 may compute its excess profits credit by using either the income method under section 435 or the invested capital method under section 436 (b).

28. Unused excess profits credit adjustment.—Section 432 provides that the unused excess profits credit for any taxable year ending after June 30, 1950, is the excess of the corporation's excess profits credit for such taxable year over its excess profits net income for such year computed without regard to the net operating loss deduction. If the taxable year is less than 12 months, the unused excess profits credit will be that portion of the unused excess profits credit determined under the general rules as the number of days in the taxable year is of the number of days in the 12-month period ending with the close of the taxable year. If the taxable year began before July 1, 1950, and ended after June 30, 1950, the unused excess profits credit will be an amount which is such portion of the unused excess profits credit determined under the general rule as the number of days in the taxable year after June 30, 1950, is of the total number of days in such taxable year. If the taxable year begins before January 1, 1954, and ends after December 31, 1953, the unused excess profits credit will be an amount which is such portion of the unused excess profits credit determined under the general rule as the number of days in the taxable year before January 1, 1954, is of the total number of days in such taxable year. There shall be no unused excess profits credit for any taxable year for which the taxpayer is exempt under section 454.

The unused excess profits credit determined under section 432 (b) will first be carried back to the first preceding taxable year as an unused excess profits credit carry-back. The balance of the unused credit may then be carried over to the five succeeding taxable years as an unused excess profits credit carry-over. The unused excess profits credit carry-over to the first succeeding taxable year will be the excess of the unused credit over the adjusted excess profits net income of the preceding taxable year. The adjusted excess profits net income for such preceding taxable year will be determined by computing the unused excess profits credit adjustment for such preceding taxable year without regard to the unused credit carry-back and without regard to the last sentence of section 431 providing for a minimum excess profits credit plus unused excess profits credit adjustment of $25,000.

If the preceding taxable year began prior to July 1, 1950, and ended after June 30, 1950, the amount by which the unused credit is reduced for the purpose of computing the carry-over is an amount which is such part of the reduction, or such part of the unused excess profits credit carry-back for such preceding taxable year, whichever is the lesser, as the number of days in such taxable year after June 30, 1950, is of the total number of days in such taxable year.

In determining the unused excess profits credit carry-over to the second, third, fourth, and fifth taxable years, the unused excess profits credit is reduced by the adjusted excess profits net income for each of the intervening taxable years. For such purpose, the adjusted excess profits net income for any intervening taxable year is determined (1) by computing the unused excess profits credit adjustment for such intervening year without regard to such unused credit and without regard to any unused excess profits credit for any year subsequent to the year of such unused credit, and (2) by disregarding the last sentence of section 431 providing for a minimum excess profits credit plus unused excess profits credit adjustment of $25,000.

For the purpose of computing the unused excess profits credit carry-over, an unused excess profits credit will not be decreased by reference to any taxable year ending prior to July 1, 1950. Furthermore, there will be no unused excess profits credit carry-back to any taxable year ended prior to July 1, 1950. For computation of unused excess profits credit for year of liquidation, see section 432 (e).

29 and 30. Adjusted excess profits net income.—The term "adjusted excess profits net income" is defined by section 431 as the excess profits net income computed under section 433 (a) minus the sum of (*a*) the amount of the excess profits credit allowed under section 434 and (*b*) the unused excess profits credit adjustment computed under section 432. If the sum of the excess profits credit and the unused excess profits credit adjustment is less than $25,000, such sum is increased to $25,000.

Under certain circumstances described in section 15 (c) the minimum excess profits credit of $25,000 is not allowed or may be reduced to a lesser figure.

Section 15 (c) provides that if a corporation on or after January 1, 1951, transfer all or part of its property (other than money) to another corporation which was created for the purpose of acquiring such property or which was not actively engaged in business at the time of such acquisition and if after such transfer the transferor corporation or its stockholders, or both, are in control of such transferee corporation during any part of the taxable year of such transferee corporation, the transferee corporation shall not for such taxable year be allowed either the $25,000 exemption from surtax or the $25,000 minimum excess profits credit provided in the last sentence of section 431, unless such transferee corporation shall establish by a clear preponderance of the evidence that the securing of such exemption or credit was not a major purpose of such transfer. For this purpose, control means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of the corporation. Rules are provided for the determination of the ownership of stock for the purposes of the section. For allocation of the surtax exemption and minimum excess profits credit in certain cases, see section 129 (b).

31 and 32. Computation—General rule.—Section 430 provides that the excess profits tax shall be the lesser of the following:

(*a*) 30 percent of the adjusted excess profits net income, or

(*b*) 18 percent of the excess profits net income.

In the case of an affiliated group of includible corporations making or required to make a consolidated return for the taxable year under section 141, the amount to be entered on line 32 shall be reduced by an amount which bears the same ratio (but not in excess of 100 percent) to the increase of 2 percent in the surtax imposed by reason of section 141 (c) as the amount of the consolidated excess profits net income bears to the amount of the consolidated corporation surtax net income.

33. Maximum tax for new corporations.—Section 430 (e) provides an additional alternative computation of the excess profits tax in the case of certain taxpayers which commenced business after July 1, 1945, and whose fifth taxable year ends after June 30, 1950. Under section 430 (e) the maximum tax is computed as follows: (*a*) by applying a special rate, depending on the taxable year of the corporation, to the first $300,000 of excess profits net income, and (*b*) by adding to the amount thus determined 18 percent of the excess over $300,000. For the first five taxable years of the corporation, counting as the first year the year of commencement of business, the special rates on the first $300,000 of excess profits net income are as follows:

First taxable year	5%
Second taxable year	5%
Third taxable year	8%
Fourth taxable year	11%
Fifth taxable year	14%

The taxpayer shall indicate on line 33 for which taxable year of its first five taxable years the return is being filed and shall insert on line 33 (a) the percentage rate applicable to such year. The amount of excess profits tax computed on the excess profits net income not in excess of $300,000 shall be entered on line 33 (b). Enter on line 33 (c) the amount of excess profits net income in excess of $300,000 multiplied by 18 percent.

The alternative computation of the maximum excess profits tax for new corporations is not available to a taxpayer which derives more than 50 percent of its gross income (determined without regard to dividends and without regard to gains from sale or exchange of capital assets) for the taxable year from contracts and subcontracts to which the provisions of Title I of the Renegotiation Act of 1951 (or the provisions of any prior renegotiation act) are applicable.

In determining the taxable year of the taxpayer for the purpose of the maximum tax on new corporations, the taxpayer shall be considered to have commenced business as of the date of commencement of business of certain related corporations described in section 430 (e) (2) (B).

34. Proration of tax.—In the case of a taxable year beginning before January 1, 1954, and ending after December 31, 1953, the excess profits tax will be an amount equal to that portion of a tentative tax determined under section 430 (a) as the number of days in such year prior to January 1, 1954, bears to the total number of days in such year.

35. (*a*) Mutual insurance companies—Section 430 (d).—In the case of a mutual insurance company other than life or marine, if the gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is over $75,000 but less than $125,000, the excess profits tax will be an amount which bears the same proportion to the amount otherwise ascertained under section 430 as the excess over $75,000 of such gross amount bears to $50,000.

(*b*) Corporations engaged in mining of strategic minerals—Section 450.—In the case of any domestic corporation engaged in the mining of a strategic mineral, named in section 450 (b) (1) or certified by proper authority, the portion of the adjusted excess profits net income attributable to such mining in the United States will be exempt from the excess profits tax. The tax on the remaining portion of the adjusted excess profits net income is an amount which bears the same ratio to the tax computed without regard to section 450 as such remaining portion bears to the entire adjusted excess profits net income.

In determining the portion of the adjusted excess profits net income which is attributable to the mining of a mineral which is a strategic mineral by reason of a certification made during the taxable year by proper authority, such portion is an amount which bears the same ratio to the portion of the adjusted excess profits net income, determined without regard to section 450, attributable to such mining during the entire taxable year as the number of days for which the corporation held the mineral property during the taxable year and after the date of the making of the certification bears to the number of days for which the corporation held the property during such taxable year.

(*c*) Abnormalities in income in taxable period—Section 456.—The Act provides an adjustment for certain abnormalities in income for the taxable year but only to the extent that the "net abnormal income" is attributable to other taxable years. Income includible in the gross income for the taxable year is treated as "abnormal income" if it is abnormal for the corporation to derive income of a particular class, or if the taxpayer normally derives income of a particular class but the amount includible in gross income for the taxable year is in excess of 115 percent of the average amount of gross income of the same class for the four previous taxable years, or so much of the four previous taxable years during which the corporation was in existence.

Abnormal income is to be determined by considering classes of income and not merely particular items.

Separate classes of income are defined in section 456 (a) (2) as follows:

(1) Income arising out of a claim, award, judgment, or decree, or interest on any of the foregoing;

(2) Income resulting from exploration, discovery, or prospecting, or any combination thereof, extending over a period of more than 12 months;

(3) Income from sale of patents, formula, or processes, or any combination thereof, developed over a period of more than 12 months; and

(4) Income includible in gross income for the taxable year, rather than for a different taxable year by reason of a change in the corporation's method of accounting.

Classification of income not included in the separately defined classes is subject to regulations.

Section 456 is to be applied only for the purpose of computing the excess profits tax for the current taxable year (including such amount of excess profits tax resulting from attributing the net abnormal income to a prior excess profits tax taxable year) or for a future taxable year. The computation of base period net income and the excess profits credit is not affected.

(*d*) Contracts under Merchant Marine Act—Section 457 (a).—The law provides for an alternative tax in the case of a corporation which has been certified by the Federal Maritime Board to the Secretary as having completed within the taxable year any contracts or subcontracts subject to the provisions of section 505 (b) of the Merchant Marine Act of 1936, as amended.

The alternative tax is in lieu of the excess profits tax computed under section 430 but only if such alternative tax is less than the tax under such section. Such alternative tax (computed as provided in section 457 (b)) is the excess of (1) a tentative tax computed under section 430 with the normal-tax net income increased by the amount of any payments made, or to be made, to the Board with respect to contracts or subcontracts the completion of which during the taxable year has been certified to the Secretary by the Board over (2) the amount of such payments.

A corporation claiming the benefit of the alternative tax provided under section 457 (a) shall attach to its return (1) a certificate of the Board showing each contract or subcontract subject to the provisions of section 505 (b) of the Merchant Marine Act which the corporation has completed within the taxable year, and (2) a statement showing the amount of payments made, or to be made, to the Board with respect to such contracts or subcontracts.

36. Foreign tax credit.—If a credit for income taxes paid to a foreign country or United States possession is allowed against the corporation normal tax and surtax, the portion of such foreign tax not used as a credit against the normal tax and surtax by reason of the limitations of section 131 (b) will be available for credit against the excess profits tax. The amount thus made available as a credit against the excess profits tax is subject to further limitations provided in section 131 (j).

38. Position inconsistent with prior income tax liability—(*a*) In general.—Section 452 authorizes an adjustment to the excess profits tax in certain cases in which the treatment of an item or transaction for excess profits tax purposes is inconsistent with prior erroneous treatment of such item or transaction for income tax purposes and correction of the error is prevented by some provision or rule of law such as the statute of limitations or res judicata.

(*b*) Circumstances of adjustment.—Generally, an adjustment with respect to a position inconsistent with prior income tax liability is made if (1) in determining at any time the excess profits tax of the corporation an item affecting the excess profits credit is treated in a manner inconsistent with the treatment accorded such item in the determination of the income tax liability of such corporation or a predecessor for a taxable year or years ending before July 1, 1950; and (2) the treatment of such item in the prior taxable year or years consistently with the determination for the purposes of the excess profits tax would effect an increase or decrease in the amount of the income taxes determined for the prior taxable year or years; and (3) on the date of such determination of the excess profits tax, correction of the effect of the inconsistent treatment in any one or more of the prior taxable years is prevented (except for the provisions of section 3801) by

the operation of any law or rule of law (other than section 3761, relating to compromises).

In case the net effect of the adjustment would be a decrease in the income taxes previously determined for such year or years, the adjustment will be made only if there is adopted in the determination a position maintained by the Secretary. In case the net effect of the adjustment would be an increase in the income taxes previously determined for such year or years, the adjustment will be made only if there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made. However, either position must be inconsistent with the treatment accorded such item in the prior taxable year or years which was not correct under the law applicable to such year.

(*c*) **Method and effect of adjustment.**—The amount of adjustment authorized under the provisions of section 452 is to be ascertained as provided in section 452 (d). In general, the difference between the aggregate of the increases, plus the interest attributable to each, and the aggregate of the decreases, plus the interest attributable to each, will be the increase or decrease, as the case may be, which is added to, or subtracted from, the excess profits tax otherwise computed for the taxable year with respect to which the inconsistent position is adopted.

SCHEDULE EP-2.—EXCESS PROFITS CREDIT—BASED ON INCOME

In general, the excess profits credit based on income for a domestic corporation is the sum of the following:

(*a*) 83 percent of the average base period net income;

(*b*) 12 percent of the amount of the base period capital addition, computed under section 435 (f), if the average base period net income is the amount determined under section 435 (d) (relating to the general average) or, in certain cases under section 442 (relating to abnormalities in base period); and

(*c*) 12 percent of the net capital addition for the taxable year, as defined in section 435 (g) (1).

From the sum so determined there is subtracted 12 percent of the net capital reduction for the taxable year, as defined in section 435 (g) (2).

The average base period net income may be determined under section 435 (d), and in such case is the average of the taxpayer's excess profits net income for the three best years in the base period. For certain fiscal year corporations the average base period net income under section 435 (d) may be computed by reference to the 48 months ending March 31, 1950.

Section 435 (e) provides alternative methods of computing the average base period net income of a corporation whose growth during the base period is demonstrated primarily by increased gross receipts or payroll during the last half of the base period. These alternative methods are also available to corporations meeting certain tests with respect to sales of a product, or class of products, of a kind not generally available to the public at any time prior to January 1, 1946.

In certain cases the average base period net income may be computed under section 442 (relating to abnormalities in the base period), section 443 (relating to changes in products or services), section 444 (relating to increase in capacity), section 445 (relating to new corporations), or section 446 (relating to depressed industry subgroups. For computation under these sections, see Schedule EP-5. Section 459 contains miscellaneous provisions providing for computation of average base period net income applicable to certain classes of taxpayers. (See instruction 27 (c), Schedule EP-1.)

The base period is the period January 1, 1946, through December 31, 1949, except in the case of a taxpayer whose first taxable year ending after June 30, 1950, was preceded by a taxable year which began before January 1, 1950, and ended January 31, February 28, or March 31, 1950. In the latter cases the base period is the 48 consecutive months ending with the close of January, February, or March, 1950.

Schedule EP-2 has, for convenience, been drawn up in columnar form and provides five columns. If necessary, appropriate changes should be made in the column headings. If additional columns are required, attach a separate schedule.

Section 433 (b) provides that for the purposes of computing the average base period net income, the excess profits net income for any taxable year shall be the normal-tax net income, as defined in section 13 (a) (2) as in effect for such taxable year, increased or decreased by certain adjustments.

In the case of a corporation which has been a party to a transaction described in section 461 (a), the credit should be computed with reference to sections 461 through 465. For rules applicable in the determination of the credit under section 435 (d) in the case of certain taxable acquisitions, see section 474.

In the case of a foreign corporation, the excess profits credit based on income is 83 percent of the average base period net income without any adjustment for capital changes.

1. **Normal-tax net income.**—The normal-tax net income for each taxable year to be entered on line 1 for the purpose of computing the average base period net income should be the amount shown in item 35, page 1, Form 1120, for 1946 and 1947, and on line 5, page 3, Form 1120, for 1948 and 1949, taking into consideration any subsequent adjustments. If for a taxable year beginning in 1945 a credit for income subject to excess profits tax has been deducted in computing the normal-tax net income, the amount to be entered on line 1 should be computed without the deduction of such credit.

In the case of a corporation electing to report income from installment sales or installment sales obligations on the accrual method, or income from long-term contracts on the percentage of completion method, recompute base period net income accordingly and enter such amount on line 1. For detailed explanation of the adjustments necessary, see general instruction E (1) and (2).

2. **Net operating loss deduction.**—Section 433 (b) (1) provides that the net operating loss deduction provided by section 23 (s) shall not be allowed in determining the excess profits net income for any taxable year in the base period. Enter on line 2 any net operating loss deduction used in computing the amount on line 1.

3. **Net loss to which section 117 (j) is applicable.**—Section 433 (b) (2) provides that there shall be excluded gains and losses from sales or exchanges of capital assets and gains and losses to which section 117 (j) is applicable. A net loss to which section 117 (j) is applicable (the excess of all section 117 (j) losses over all section 117 (j) gains) should be entered on line 3. No adjustment for a net capital loss sustained is necessary since such a loss was not allowable in computing normal-tax net income. Provision for the subtraction of a net gain from the sale or exchange of capital assets, including a net gain to which section 117 (j) is applicable (the excess of all section 117 (j) gains over all section 117 (j) losses), is made on line 21.

4. **Deductions on account of retirement or discharge of bonds, etc.**—If during the taxable year the taxpayer retires or discharges any bond, debenture, note, or certificate, or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, the following deductions for the taxable year shall not be allowed:

(*a*) The deduction allowable under section 23 (a) for expenses paid or incurred in connection with such retirement or discharge;

(*b*) The deduction for losses allowable by reason of such retirement or discharge; and

(*c*) In case the issuance was at a discount, the amount deductible for such year solely because of such retirement or discharge.

In making the adjustments provided in section 433 (b) (4), the deduction allowable for any premium paid on bonds when called for redemption shall be disallowed, but the deduction allowable for any discount amortized up to the date of retirement or discharge shall not be disallowed. Expenses incurred in issuing bonds which are amortized shall be treated in the same manner as discounts.

5. **Deductions under reserve method for bad debts, in case of banks.**—In the case of banks using the reserve method of accounting for bad debts, there shall be allowed, in lieu of the amount allowable under the reserve method for bad debts, a deduction for debts which became worthless within the taxable year, in whole or in part, within the meaning of section 23 (k). A bank using the reserve method of accounting for bad debts will enter on line 5 the amount of the deduction used in computing line 1. The amount of the debts which actually became worthless during the taxable year should be entered on line 24.

6. **Federal income taxes paid by lessee under long-term lease.**—The adjustment on line 6 is to disallow the deduction by a lessee of an amount of Federal income taxes paid on behalf of a lessor. The adjustment on line 23 is to exclude this amount from income in the case of a lessor.

If under a lease for a term of more than 20 years, entered into prior to December 1, 1950, the lessee is required to pay any portion of the tax imposed by chapter 1 upon the lessor with respect to the rentals derived by such lessor from such lessee, or is obligated to reimburse the lessor for any portion of the tax imposed

by chapter 1 upon the lessor with respect to the rentals derived by such lessor from such lessee, such payment or reimbursement shall be excluded by the lessor and a deduction therefor shall not be allowed to the lessee. For treatment of certain leases of railroad properties containing renewal clauses, see section 433 (b) (11).

7. **Repayment of processing tax to vendees.**—The deduction under section 23 (a), for any taxable year, for expenses shall be decreased by an amount which bears the same ratio to the amount deductible on account of any repayment or credit by the corporation to its vendee of any amount attributable to any tax under the Agricultural Adjustment Act of 1933, as amended, as the excess of the aggregate of the amounts so deductible in the base period over the aggregate of the amounts attributable to taxes under such Act collected from its vendees, which were includible in the corporation's gross income in the base period and which were not paid, bears to the aggregate of the amounts so deductible in the base period.

8. **Dividends received credit.**—Section 26 (b) provides for the allowance of a dividends received credit to the extent indicated in the various sections imposing tax, while section 433 (b) (6) provides that the credit for dividends received shall apply without limitation (except the limitation relating to dividends in kind) to all dividends on stock of all corporations, except that no credit for dividends received shall be allowed with respect to dividends (actual or constructive) on stock of foreign personal holding companies or dividends on stock which is not a capital asset. The dividends received credit used in computing the amount entered on line 1 should be entered on line 8. Provision for the subtraction of the amount of the dividends received is made on line 20. As indicated above in this paragraph, the dividends received do not, for the purpose of the adjustment on line 20, include dividends received on stock of a personal holding company or dividends on stock which is not a capital asset and the amount is subject to the limitation to dividends in kind.

9 through 12. **Abnormal deductions.**—In general, sections 433 (b) (9) and (10) provide that if for any taxable year within or beginning or ending within, the base period, any class of deductions for the taxable year exceeded 115 percent of the average amount of deductions of such class for the four previous taxable years, the deductions of such class shall be disallowed in an amount equal to such excess. If a single extraordinary event gives rise to deductions of the same class for more than one taxable year, then, in determining whether the deductions of such class arising from such extraordinary event exceed 115 percent of the average deductions of that class for the four previous taxable years, such average shall be computed without reference to any deductions attributable to the particular extraordinary event.

Each of the following groups of deductions shall constitute a class of deductions:

(*a*) Deductions attributable to claims, awards, judgments, and decrees against the taxpayer, and interest on the foregoing.

(*b*) Deductions attributable to intangible drilling and development costs paid or incurred in or for drilling of wells or the preparation of wells for the production of oil or gas, and for development costs in the case of mines.

(*c*) Deductions under section 23 (f) for losses arising from fires, storms, shipwreck, or other casualty, or from theft, or arising from demolition, abandonment, or loss of useful value of property, not compensated for by insurance or otherwise. This class of deductions does not include losses from the sale or exchange of capital assets or losses to which section 117 (j) is applicable.

Classification of deductions not included in the separately defined classes is subject to regulations.

Deductions of any class for any taxable year shall not be disallowed unless—

(*a*) The amount of deductions of such class to be disallowed for such year exceeds 5 percent of the average excess profits net income for the taxable years within, or beginning or ending within, the base period (computed without the disallowance of any such class of deductions), and

(*b*) The taxpayer establishes that the increase in such deductions is not a cause or a consequence of an increase in the gross income of the taxpayer in its base period or a decrease in the amount of some other deduction in its base period, which increase or decrease is substantial in relation to the amount of the increase in the deductions of such class, and

(*c*) The taxpayer establishes that the increase in such deductions is not a consequence of a change at any time in the type, manner of operation, size, or condition of the business engaged in by the taxpayer.

The amount of deductions of any class to be disallowed with respect to any taxable year in the base period shall not exceed the amount by which the deductions of such class for such taxable year exceed the deductions of such class for the taxable year for which excess profits tax is being computed.

If in computing excess profits net income for any taxable year in the base period, the taxpayer claims the disallowance under section 433 (b) (9) and (10) of any amount previously allowed as a deduction, there shall be submitted a full and complete statement showing the computation of the amount to be disallowed, the basis upon which each requirement of section 433 (b) (9) and (10) is satisfied, and all the facts upon which the taxpayer relies.

13. **Adjustment of assessments paid by banks to Federal Deposit Insurance Corporation.**—In the case of a bank, the deduction for the assessment by the Federal Deposit Insurance Corporation for any taxable year in the base period shall be reduced to an amount which is such part thereof as the net assessment (after credits applicable thereto) for the taxable year for which excess profits tax is being computed is of the gross assessment for the taxable year for which excess profits tax is being computed.

14. **Capitalization of expenditures for advertising or promotion of good will.**—Under the provisions of section 451 any taxpayer may elect, in a statement attached to its return or filed within 6 months after the date prescribed by law for filing its return for its first taxable year ending after June 30, 1950, to charge to capital account deductions based upon expenditures for taxable years in its base period on account of advertising or the promotion of good will, to the extent that such expenditures may be regarded as capital investments. The election is applicable only with respect to expenditures to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical.

15. **Deductions attributable to technical services.**—The adjustment on line 15 is the sum of any deductions described below deducted in arriving at the amount on line 1. The adjustment on line 25 is the amount of any income described below included in computing line 1.

Section 433 (b) (16) provides that in the case of a domestic corporation which renders to a related corporation technical assistance, engineering services, scientific assistance, or similar services (such services or assistance being related to the production or improvement of products of the type manufactured by such domestic corporation), there shall be excluded the remuneration for such services or assistance if such remuneration constitutes income derived from sources without the United States. Any deductions in connection with or properly allocable to rendering of such services or assistance shall not be allowed. For this purpose, a foreign corporation shall be considered a "related foreign corporation" if 10 percent or more of its outstanding stock is owned by the domestic corporation.

16. **Adjustment for interest.**—Section 433 (b) (17) provides that, in the case of a dealer in certain Government obligations which makes the election provided by section 440 (c), the excess profits net income shall be increased by the excess of the amount of interest received or accrued on such obligations during each taxable year in the base period reduced (but not below zero) by the amount of interest paid or accrued during such year which is not allowed as a deduction under section 23 (b). In the case of a taxable year ending after June 30, 1950, such interest shall further be reduced by the amount of the adjustment required under section 22 (o) (relating to the adjustment for certain bond premiums) but not by an amount greater than the amount of interest received or accrued during the taxable year on Government obligations to which such section is applicable. For this purpose the term "Government obligation" means obligations described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income; but such term shall include only such obligations as in the hands of the taxpayer are property described in section 117 (a) (1) (A).

17. **Adjustment for base period losses from branch operations.**—Section 433 (b) (18) provides that, in certain cases, the excess profits net income, otherwise determined, for each year in the base period may be increased with respect to losses sustained in the base period arising from branch operations by the taxpayer. Such an adjustment is authorized only if—

(*a*) the branch is located at a separate place from the taxpayer's other business activities;

(*b*) the branch was operated at a loss during two or more taxable years in the base period;

(*c*) the character of the products or services produced by the branch differs substantially from the other business of the taxpayer, i. e., the branch is of a type classifiable by the Standard Industrial Classification Manual in a different major industry group or in a different subgroup of the taxpayer's major group; and

(*d*) the aggregate net losses of the branch during the base period exceed 15 percent of the aggregate excess profits net income of the taxpayer during the base period. The term "aggregate excess profits net income" means the sum of the excess profits net income for all years in the base period, increased by the sum of the net losses of such branch during the base period.

If section 433 (b) (18) is applicable, the excess profits net income for any taxable year beginning or ending in the base period shall be increased by the amount of the excess of (i) the loss sustained in the operation of the branch in such year over (ii) the loss, if any, incurred by such branch during the taxable year for which excess profits tax is being computed. If section 433 (b) (18) is applicable, submit statement of pertinent facts and schedule of computation.

18. Adjustment for deposits under Merchant Marine Act.—Section 457 (c) provides that the excess profits net income for any base period year shall be increased by an amount equal to the excess of (1) the tax deferred deposits of earnings, made in or accrued to reserve funds under section 607 of the Merchant Marine Act, 1936, with respect to such base period year, over (2) the amount of such deposits of earnings for the taxable year for which excess profits tax is being computed. Proper adjustment shall be made of deposits made in or accrued to the reserve funds for any taxable year so as to exclude therefrom any amounts payable for such year as reimbursement of operating-differential subsidy. If section 457 (c) is applicable, submit statement of pertinent facts and schedule of computation.

20. Dividends received.—See instruction 8.

21. Net gain from sale or exchange of capital assets.—See instruction 3.

22. Income from retirement or discharge of bonds, etc.—There shall be excluded in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge.

23. Federal income taxes received by lessor under long-term lease.—See instruction 6.

24. Debts which actually became worthless during the year, in the case of banks.—See instruction 5.

25. Income attributable to technical services.—See instruction 15.

26. Adjustment for certain coal royalties.—Section 433 (d) provides that the excess profits net income for taxable years in the base period shall be computed as if the provisions relating to the disposal of coal contained in section 117 (j) and section 117 (k) (2) were a part of the law applicable to the taxable year in the base period for which an excess profits net income is being computed. Enter on this line the excess of—

(*a*) the difference between amounts received upon the disposal of coal in the taxable year and the adjusted depletion basis thereof, over

(*b*) the excess of the allowance for percentage depletion provided for in section 114 (b) (4) with respect to such coal for such year over the amount allowable for cost depletion.

29. Deductions applicable to life insurance companies.—In the case of a life insurance company there shall be deducted from the normal-tax net income the excess of (*a*) the product of (1) the figure determined and proclaimed under section 202 (b) and (2) the excess profits net income computed without regard to this deduction, over (*b*) the adjustment for certain reserves provided in section 202 (c).

31 through 38. Average base period net income—General average.—(*a*) Lines 31 and 32 provide a computation which is applicable only to a taxpayer whose base period, as defined in general instructions for this schedule, consists of four 12-month taxable years which are either the calendar years 1946 through 1949 or fiscal years ending on the last day of January, February, or March, 1947, through 1950. The aggregate excess profits net income for the three highest years, as shown on line 30, is divided by 3 to obtain the average base period net income.

(*b*) Lines 33 through 38 are for the use of all other taxpayers. A taxpayer which had a taxable year beginning in 1949 and ending after March 31, 1950, may compute an average base period net income under the general average method either for (1) its base period as defined in general instructions for this schedule, or (2) an alternative period consisting of 48 consecutive months ending March 31, 1950, whichever produces the lesser excess profits tax. Lines 33 through 38 are adapted for computation of average base period net income for either period. A taxpayer with a taxable year beginning in 1949 and ending after March 31, 1950, should indicate immediately preceding line 33 which period is used in the computation of the average base period net income.

33. (*a*). For purposes of line 33 (a) the amounts of excess profits net income as shown on line 30 are divided by the number of full calendar months in the respective taxable years. If a taxpayer was not in existence throughout the entire 48 months of its base period, its excess profits net income for any month during no part of which it was in existence shall be zero.

33. (*b*). This line is to be used in computing an average base period net income by a taxpayer electing the alternative period described above in lieu of its base period. Such a taxpayer should enter in column 5 on this line the same amount appearing in column 5, line 33 (a) if the taxable year in this column ended after March 31, 1950, and before July 1, 1950; 90 percent of such amount if such taxable year ended after June 30, 1950, and before October 1, 1950; or 80 percent of such amount if such taxable year ended after September 30, 1950, and before December 31, 1950.

34. Enter in each column of line 34 the number of months during any part of which the taxpayer was in existence which fall within its base period, or within the alternative period if the taxpayer is computing an average base period net income by reference to the alternative period.

35. The number of months to be entered on line 35 should total 36 and should be the 36 months which produce the highest aggregate excess profits net income determined in either of the following ways: (*a*) the 12 consecutive months with the lowest aggregate excess profits net income may be eliminated, or (*b*) the 36 consecutive months which produce the highest aggregate excess profits net income may be retained.

If the alternative period is used in lieu of the base period, then in determining the 36 months to be entered on this line the average monthly excess profits net income for the months of January, February, and March, 1950, included in the total number of months shown in column 5, line 34, will be the weighted monthly average on line 33 (b), and the average monthly excess profits net income for the preceding months in such taxable year will be the monthly average shown in column 5, line 33 (a).

36. Enter in each column of line 36 the respective products of lines 33 (a) and 35 except that if the alternative period is used, the amount on line 33 (b) should be substituted for the amount on line 33 (a) with respect to the months of January, February, and March, 1950, if such months are included in the number of months entered on line 35.

39 through 48. Average base period net income—Alternative based on growth.—A taxpayer which commenced business prior to the end of its base period, if it meets certain requirements, is entitled to an alternative average base period net income computed, in general, upon the basis of the average income of the last 12 months of the base period, or the last 24 months of the base period, or an adjusted average for the 12 months ended June 30, 1950, whichever is highest.

A taxpayer computing average base period net income by using an alternative based on growth shall submit with its return a full and complete statement showing the basis upon which each requirement of section 435 (e) is satisfied and all the facts upon which the taxpayer relies.

(*a*) Eligibility requirements—General rule.—Eligibility is established if total assets on the first day of the base period (including the assets of all members of taxpayer's affiliated group) did not exceed $20,000,000, and either—

(1) The total payroll for the last half of the base period is 130 percent or more of the total payroll for the first half of the base period; or

(2) The gross receipts for the last half of the base period are 150 percent or more gross receipts for the first half of the base period.

(*b*) Eligibility requirements—Products not generally available prior to 1946.—A taxpayer is also entitled to use as its average base period net income the alternative based on growth if it commenced business before the end of its base period and if it meets the following tests:

(1) The amount of the taxpayer's net sales for the period beginning January 1, 1950, and ending June 30, 1950, when multiplied by 2, equals or exceeds 150 percent of its average net sales for the calendar years 1946 and 1947; and

(2) 40 percent or more of the taxpayer's net sales for the calendar year 1950 is attributable to a product, or class of products (including any article in which such product or class of products is the principal component and including any article which is a component of such product or class of products), of a kind not generally available to the public at any time prior to January 1, 1946, and

(3) The amount of the taxpayer's net sales which is attributable to such product or class of similar products for the calendar year 1946 is 5 percent or less of the amount of its net sales so attributable for the calendar year 1949.

A product which is a modification of an old product, such as an improvement or change in style, is not a product of the type referred to. A product which was generally available prior to 1946, although not available at all times prior thereto is also not covered.

For the purposes of these tests, the term "net sales" with respect to any period means the total amount received or accrued during such period from the sale, exchange, or other disposition of stock in trade of the taxpayer or other property of a kind which would

properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business; reduced by the amount of discounts, returns, and allowances paid or incurred for such period.

39. Total assets as of first day of base period.—Enter on this line total assets of the taxpayer as of the first day of its base period computed by aggregating the cash and property other than cash held by the taxpayer on such day for the purpose of the business. Property shall be included for the purpose of this computation in an amount equal to its adjusted basis for determining gain upon sale or exchange. If the taxpayer is a member of an affiliated group which has the privilege under section 141 of filing a consolidated return for its first taxable year ending after June 30, 1950, there shall also be included the total assets of the affiliated group whether or not a consolidated return is filed, and such total assets shall be determined in a manner consistent with the principles applicable with respect to consolidated returns.

40. Total payroll and gross receipts.—For the purpose of determining the amount to be entered on lines 40 (a) and (b), the term "total payroll" means the sum of the salaries, wages, commissions, and other compensation paid or incurred by the taxpayer during such period for personal services actually rendered by employees, excluding the amount thereof which is allowable as a deduction under section 23 (p) and excluding any compensation paid in any medium other than cash.

The term "gross receipts" means the sum of—

(*a*) The total amount received or accrued during such period from the sale, exchange, or other disposition of stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and

(*b*) The gross income, attributable to a trade or business regularly carried on by the taxpayer, received or accrued during such period excluding therefrom—

Gross income derived from the sale, exchange, or other disposition of property;

Gross income derived from discharge of indebtedness of the taxpayer;

Dividends on stocks of corporations; and

Income attributable to recovery of bad debts.

In the event that a taxable year falls partly within the period, there shall be allocated to the portion of the year within the period an amount of the total payroll, or total gross receipts, for such year in the same proportion as the number of months in the year within the period bears to the total number of months in the year.

41 and 43. Excess profits net income.—The excess profits net income for each of the months to be included in the aggregates to be entered on the lines 41 and 43 is the excess profits net income for the taxable year in which such month falls divided by the number of full calendar months in such year but in no case shall the excess profits net income for any month be less than zero.

44. Weighted excess profits net income.—The weighted excess profits net income for any month after December 1949 shall be the "weighted excess profits net income" for the taxable year in which the month falls divided by the number of full calendar months in such year, but in no case shall the weighted excess profits net income for any month be less than zero. The weighted excess profits net income for any taxable year beginning before July 1, 1950, shall be—

(*a*) 100 percent of the excess profits net income for any taxable year ending before July 1, 1950;

(*b*) 90 percent of the excess profits net income for any taxable year ending after June 30, 1950, and before October 1, 1950;

(*c*) 80 percent of the excess profits net income for any taxable year ending after September 30, 1950, and before April 1, 1951; and

(*d*) 70 percent of the excess profits net income for any taxable year ending after March 31, 1951.

The aggregate of the weighted excess profits net income for each of the 6 months, January through June 1950, should be entered on line 44.

45. Excess profits net income for last 6 months of 1949.—If the taxpayer is entitled to the benefits of section 435 (e), the aggregate of the excess profits net income for each of the 6 months July through December 1949, should be entered on line 45.

If the taxpayer meets the eligibility requirements with respect to products not generally available prior to 1946, and if its excess profits net income for the calendar year 1949 is not more than 25 percent of its excess profits net income for the calendar year 1948, the aggregate of the excess profits net income for each of the 6 months, July through December 1948, should, if higher, be substituted for the aggregate of the excess profits net income for each of the last 6 months of 1949 on line 45 and the substitution indicated.

50. Base period capital addition.—If the average base period net income is the general average (line 32 or line 38) or, in certain cases, is determined with reference to abnormalities in the base period (section 442) or with reference to section 459, the excess profits credit based on income includes 12 percent of the base period capital addition as computed on Schedule EP-2 (A).

53 and 55. Adjustment on account of the net capital addition or reduction for the taxable year.—In determining the excess profits credit based on income under section 435 it is necessary to make adjustments for capital changes after the beginning of the first taxable year. No capital adjustments are permitted or required in the case of a foreign corporation. If the average base period net income is determined under section 443 or section 445, the net capital addition or reduction is the amount computed after giving effect to the provisions of section 443 (d) or section 445 (e). For capital additions and reductions in case of certain exchanges, see part II of the excess profits tax law (sections 461 through 465), and in the case of certain taxable acquisitions, see part IV (section 474).

SCHEDULE EP-2 (A)—BASE PERIOD CAPITAL ADDITION

In general, section 435 (a) (1) (B) provides that, if the average base period net income of the taxpayer is determined under the general average method, there shall be included as part of the excess profits credit 12 percent of the amount of the base period capital addition, computed under section 435 (f). No adjustment to reflect a net decrease in base period capital is required.

If the average base period net income is based on growth (lines 39 through 48, Schedule EP-2); or is computed under provisions of the law relating to new corporations (Schedule EP-5 (A)); change in products or services (Schedule EP-5 (C)); increase in capacity for production or operation (Schedule EP-5 (D)); or depressed industry subgroups (Schedule EP-5 (E)); then no base period capital addition is allowed. If average base period net income is computed under provisions of law relating to abnormalities during base period (Schedule EP-5 (B)), see instructions for that schedule. If the average base period net income is computed by reference to section 459, see instruction 27 (c), Schedule EP-1.

In the case of installment basis taxpayers and taxpayers with income from long-term contracts electing under section 455, see general instructions E (1) and (2).

The base period capital addition is, in general, the sum of the net addition to capital for the taxpayer's last taxable year ending before July 1, 1950, plus one-half the net addition to capital for the immediately preceding taxable year. In determining the net addition to capital, the full increase in equity capital and 75 percent of the increase in borrowed capital are taken into account, subject to adjustments for interest on borrowed capital for increases or decreases in inadmissible assets, and for increases or decreases in loans to members of a controlled group of which the taxpayer is a member.

1 and 2. Total assets and liabilities at beginning of taxable year.—The amount of assets to be entered on line 1 is the sum of the cash and other property, held by the taxpayer in good faith for the purposes of the business, at the beginning of the first day of each taxable year. Property shall be included in an amount equal to its adjusted basis for determining gain upon sale or exchange, except that the adjusted basis of secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property shall be determined without regard to value as of March 1, 1913. In determining the sum of cash and other property, so much of the distributions to shareholders made during the first 60 days of any taxable year (other than the first taxable year ending after June 30, 1950) as does not exceed the accumulated earnings and profits at the beginning thereof shall be considered to have been made on the last day of the preceding taxable year (see section 441 (e)). In the case of an insurance company (other than mutual and other than life or marine), 50 percent of its reserves required by law (other than reserves used in computing borrowed capital under section 439 (b) (2)), as well as its organization expenses, shall be included in assets. For special rule in the case of improvements by a lessee to properties of a lessor railroad corporation, see section 441 (j).

See section 470 for rules applicable in determining the adjusted basis of assets acquired in an intercorporate liquidation.

The amount of liabilities on line 2 shall include all liabilities of the corporation which are absolute and not contingent. In the case of assets subject to a mortgage or other lien, the amount of the indebtedness secured by such mortgage or lien shall be considered as a liability of the taxpayer whether or not the taxpayer assumed or agreed to pay such indebtedness. In the case of a bank (as defined in section 104) its reserves for bad debts shall not (*a*) reduce assets, or (*b*) be treated as liabilities.

4. 75 percent of borrowed capital at beginning of year.—Borrowed capital at the beginning of any year shall be determined as of the first day of the year. Borrowed capital as of any day shall be determined as of the beginning of such day and shall be the amount of the outstanding indebtedness (not including interest) of the taxpayer, incurred in good faith for the purposes of the business, which indebtedness is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, deed of trust, bank-loan agreement, or conditional sales contract. In the case of property of the taxpayer subject to a mortgage or other lien, the amount of indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the taxpayer whether or not the taxpayer assumed or agreed to pay such indebtedness. Insurance companies and face-amount certificate companies, see section 439 (b) (2), (3), and (4).

6. Adjustment for interest on borrowed capital.—The amount to be entered on line 6 is determined by (*a*) multiplying any indebtedness of the taxpayer which constitutes borrowed capital for the first day of the taxable year by the annual rate of interest payable upon such indebtedness during such taxable year, and (*b*) multiplying the total of the amounts so ascertained by 100 and dividing the product by 12.

8. Adjustment for loans to members of controlled groups at beginning of year.—Controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (*a*) more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations and (*b*) the common parent corporation owns directly more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock, of at least one of the other corporations.

If on the first day of any taxable year the taxpayer was a member of a controlled group, enter 75 percent of the amount of the indebtedness to the taxpayer of any other members of the controlled group. For this purpose, the term "indebtedness" means indebtedness which constitutes borrowed capital, defined in section 439 (b) (1), of such other member of the controlled group for such day.

9. Inadmissible assets adjustment.—The term "inadmissible assets" includes—

(*a*) Stock in corporations, except stock in a foreign personal holding company, and except stock which is not a capital asset;

(*b*) Obligations described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income; and

(*c*) In the computation of the tax for a taxable year ending after December 31, 1950, the economic interest referred to in the provisions of section 117 (k) (2) relating to coal if the taxpayer is subject to such provisions with respect to the income from such coal.

In the case of dealers in Government securities, certain tax-exempt and partially tax-exempt securities may be treated as admissible assets if an election is made under section 440 (c) to include the interest thereon in excess profits net income. See General Instruction F.

In the computation of the tax for a taxable year beginning on or after October 20, 1951, the adjustment for inadmissible assets in the case of banks must be made under section 435 (f) (6) which provides a proportionate adjustment with respect to inadmissible assets. Under this provision the amount to be entered on line 9 is an amount which bears the same ratio to the excess of the amount on line 5 over the sum of amounts on lines 7 and 8 as the amount of the inadmissible assets held at the beginning of such year bears to the total of admissible and inadmissible assets as of such date. If the taxpayer elects by a statement attached to its return, the adjustment for inadmissible assets under section 435 (f) (6) may be made applicable in the computation of the tax for all taxable years beginning before October 20, 1951. A taxpayer using the adjustment for inadmissible assets provided in section 435 (f) (6) should so indicate on the return and should submit a schedule showing computation.

SCHEDULE EP-2 (B)—TAXABLE YEAR CAPITAL ADDITION OR REDUCTION

In general, section 435 (a) provides that the excess profits credit based on income shall be increased by 12 percent of the net capital addition for the taxable year or reduced by 12 percent of the net capital reduction for the taxable year.

The net capital addition (or reduction), in general, consists of the net increase (or decrease) in equity and borrowed capital determined by comparing the equity and borrowed capital for the taxable year with the equity and borrowed capital at the close of the last taxable year ending before July 1, 1950. For this purpose borrowed capital is taken into account at 75 percent. Under certain circumstances an adjustment is made with respect to inadmissible assets and loans to members of a controlled group of corporations of which the taxpayer is a member.

A net capital addition may be allowed, or the amount otherwise determined may be increased, in certain cases described in section 435 (g) (9) where a decrease in inadmissible assets (in excess of the capital reduction, if any) is accompanied by a corresponding increase in operating assets. For this purpose an increase in operating assets is taken into account only to the extent that it exceeds the net capital addition as adjusted under section 435 (g) (9). The term "operating assets," in general, includes depreciable property and land used in the taxpayer's trade or business, as well as stock in trade or property held primarily for sale to customers, but does not include cash, securities, or intangible property. If section 435 (g) (9) is applicable to the taxpayer, the net capital addition may be determined (1) by computing a tentative net capital addition or reduction using Schedule EP-2 (B) as a guide but disregarding the adjustment for inadmissible assets on line 22, and (2) by making the following additional computations:

(*a*) Fill in line 22, whether or not an amount appears on line 21, limiting the amount on line 22 (d) to an amount not greater than 25 percent of the amount by which (i) the excess of line 14 over line 8 (disregarding for this purpose the 75-percent limitation appearing on lines 11 and 13), exceeds (ii) the amount on line 22 (b). The amount of the decrease in inadmissible assets (in excess of the capital reduction, if any) is the excess of the amount thus computed on line 22 (e) over the amount, if any, on line 21. In the case of a bank, the amount of the decrease in inadmissible assets to be taken into account is computed by reference to section 435 (g) (9) (B).

(*b*) Compute the excess of the average daily amount of operating assets for the taxable year over the amount of operating assets as of the first day of the first taxable year ending after June 30, 1950. For this purpose the adjusted basis of operating assets shall be used.

(*c*) Recompute the amount on line 19, disregarding for this purpose the 75-percent limitation appearing on lines 7, 11, and 13.

(*d*) Add to the tentative net capital addition, if any, whichever of the following amounts is the lesser: (i) the amount computed under (*a*), or (ii) the excess of the amount computed under (*b*) over the amount computed under (*c*). The amount to be added to the tentative net capital addition, if any, may also be subject to adjustment to the extent that an increase in operating assets is determined to be a result of an increase in indebtedness other than borrowed capital.

A taxpayer computing a net capital addition by reference to section 435 (g) (9) should attach a schedule showing computation and include a detailed statement of operating assets.

If average base period net income is computed under the provisions relating to change in products or services (Schedule EP-5 (C)), or new corporations (Schedule EP-5 (A)), see instructions for those schedules. If average base period net income is computed under section 459, see instruction 27 (c), Schedule EP-1.

In the case of installment basis taxpayers and taxpayers with income from long-term contracts electing under section 455, see general instructions E (1) and (2).

1 and 2. Equity capital.—See instructions 1 and 2, Schedule EP-2 (A).

3. Borrowed capital at beginning of first taxable year ending after June 30, 1950.—The amount to be entered on line 3 is the total amount of borrowed capital at the beginning of the first taxable year ending after June 30, 1950. See instruction 4, Schedule EP-2 (A).

4. Average daily amount of borrowed capital for the taxable year.—The average daily amount of borrowed capital for the taxable year is the aggregate of the borrowed capital as of the

beginning of each day of the taxable year, divided by the number of days in the taxable year. See instruction 4, Schedule EP–2 (A).

5. Average daily amount of money and property paid in during the taxable year for stock, or as paid-in surplus, or as a contribution to capital.—For each day of the taxable year, the daily amount of money and property paid in during the taxable year for stock, or as paid-in surplus, or as a contribution to capital, is the total amount of money and property so paid in during such year and prior to such day. The average daily amount of money and property paid in is the aggregate of the daily amount for each day of the taxable year, divided by the number of days in the taxable year.

For the purpose of determining the amount of property paid in for stock, or as paid-in surplus, or as a contribution to capital, such property shall be included in an amount equal to its basis (unadjusted) for determining gain upon sale or exchange. In the case of intangible property, the basis (unadjusted) and the adjusted basis for determining gain upon sale or exchange shall be determined without regard to the value as of March 1, 1913. For the purposes of this paragraph, the term "intangible property" means secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property. If the unadjusted basis of the property is a substituted basis, such basis shall be adjusted, with respect to the period before the property was paid in, by an amount equal to the adjustments proper under section 113 (b) (2).

For the purpose of determining the amount of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, there shall be included only money and property paid in good faith for the purposes of the taxpayer's business.

A distribution by a corporation of its stock or rights to acquire its stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital.

For the purpose of determining the amount of property paid in for stock, or as paid-in surplus, or as a contribution to capital—

(a) If the basis (unadjusted) of the property for determining gain upon a sale or exchange is determined by reference to the basis of the property in the hands of the transferor, proper adjustment shall be made for the amount of any liability of the transferor assumed upon the exchange and of any liability subject to which such property was so received, for the amount of any other liability of the taxpayer constituting consideration for the property so received, and for the aggregate of the amount of money and the fair market value of other property (other than such stock and other than such liabilities) transferred to the transferor.

(b) If an indebtedness of the taxpayer is canceled or released in exchange for stock, or as paid-in surplus, or as a contribution to capital, the amount paid in shall be considered equal to the amount of the indebtedness.

(c) For special rule in the case of improvements by a lessee to the properties of a lessor railroad corporation, see section 441 (j).

9. Average daily amount of distributions during the taxable year not out of earnings and profits of such year.—For each day of the taxable year, the daily amount of distributions not out of earnings and profits is the total amount of such distributions made during the year and prior to such day. The average daily amount of such distributions is the aggregate of the daily amount for each day of the taxable year, divided by the number of days in the taxable year. A distribution by a corporation of its stock or rights to acquire its stock shall not be considered as a distribution.

In determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution by reason of any distribution made during such taxable year or by reason of the tax under chapter 1 for such year and the determination shall be made without regard to the amount of earnings and profits at the time the distribution was made.

So much of the distributions to shareholders made during the first 60 days of any taxable year (other than the first taxable year ending after June 30, 1950) as does not exceed the accumulated earnings and profits at the beginning thereof shall be considered to have been made on the last day of the preceding taxable year. See section 441 (e).

12. Average daily amount of increase in certain inadmissible assets held by member of controlled group.—For definition of controlled group, see instruction 8, Schedule EP–2 (A).

The amount required to be included in the daily capital reduction, under section 435 (g) (4) (D), for any day of the taxable year, on account of an increase in certain inadmissible assets held by a member of a controlled group, shall be the amount determined under (*a*) or (*b*) below, whichever is the lesser:

(*a*) The excess of the aggregate of the adjusted basis (for determining gain upon sale or exchange) of stock in such other corporation (or if more than one, in such other corporations) held by the taxpayer at the beginning of such day over the aggregate of the adjusted basis (for determining gain upon sale or exchange) of stock in such other corporation (or if more than one, in such other corporations) held by the taxpayer at the beginning of its first taxable year ending after June 30, 1950.

(*b*) The excess of the aggregate of the adjusted basis (for determining gain upon sale or exchange) of inadmissible assets held by the taxpayer at the beginning of such day, over the aggregate of the adjusted basis (for determining gain upon sale or exchange) of inadmissible assets held by the taxpayer at the beginning of its first taxable year ending after June 30, 1950.

The amount to be entered on line 12 is the aggregate of the amount determined for each day of the taxable year, divided by the number of days in the taxable year.

13. 75 percent of average daily amount of increase in loans to member of controlled group.—The daily amount of increase in loans to a member of a controlled group on any day of the taxable year shall be the excess of the amount of the indebtedness of such other corporation (or if more than one, such other corporations) to the taxpayer at the beginning of such day over the amount of the indebtedness of such other corporation (or if more than one, such other corporations) to the taxpayer at the beginning of its first taxable year ending after June 30, 1950. See instruction 4, Schedule EP–2 (A), for definition of indebtedness.

The average daily amount of such increase is the aggregate of such increase for each day of the taxable year, divided by the number of days in the taxable year.

15. Total inadmissible assets at beginning of first taxable year ending after June 30, 1950.—See instruction 9, Schedule EP–2 (A), for definition of inadmissible assets.

16. Average daily amount of inadmissible assets for the taxable year.—The average daily amount of inadmissible assets for the taxable year is the aggregate of the total inadmissible assets for each day of the taxable year, divided by the number of days in the taxable year.

17. Excess, if any, of average daily capital addition over average daily capital reduction.—If the average daily capital addition (line 8) exceeds the average daily capital reduction (line 14), the excess of line 8 over line 14 should be entered on line 17. This is the amount of the net capital addition before adjustment for any increase in inadmissible assets. If an amount is entered on line 17, lines 18, 19, and 20 should be completed but no entry should be made on lines 21 through 24.

18. Adjustment for increase in inadmissible assets.—This line provides for computation of the adjustment for any increase in inadmissible assets required by section 435 (g) (1) in determining the net capital addition. The increase in inadmissible assets (the excess, if any, of line 16 over line 15) is reduced on line 18 (a) for any increase in the daily capital reduction (line 12) attributable to an increase in certain inadmissible assets held by a member of a controlled group. (Section 435 (g) (4) and (6).) Lines 18 (b), (c), and (d) provide an adjustment which is required where the adjusted increase in inadmissible assets exceeds that part of the amount of the net capital addition which is attributable to an increase in equity capital.

An alternative computation of the adjustment for inadmissible assets is provided under section 435 (g) (8) (A) in the case of a bank which has an increase in total assets for the taxable year in excess of the amount on line 17. Under this provision the amount of the adjustment for inadmissible assets on line 18 (e) may not be greater than an amount which bears the same ratio to the increase in inadmissible assets for the taxable year (excess of line 16 over line 15) as the amount on line 17 bears to the increase in total assets for the taxable year. The increase in total assets is determined by computing the excess of the average total assets for the taxable year over the total assets of the taxpayer for the first day of the first taxable year ending after June 30, 1950. If the taxpayer uses the alternative adjustment for inadmissible assets, enter the amount so determined on line 18 (e), indicate that such substitution has been made, and submit schedule showing computation.

21. Excess, if any, of average daily capital reduction over average daily capital addition.—If the average daily capital reduction (line 14) exceeds the average daily capital addition (line 8), the excess of line 14 over line 8 should be entered on line 21. This is the amount of the net capital reduction before adjustment for any decrease in inadmissible assets.

22. Adjustment for decrease in inadmissible assets.—This line provides for the computation of the adjustment for any decrease in inadmissible assets required by section 435 (g) (2) in determining the net capital reduction. The decrease in inadmissible assets (the excess, if any, of line 15 over line 16) is entered on line 22 (a). Lines 22 (b), (c), and (d) provide an adjustment which is required where the decrease in inadmissible assets exceeds that part of the amount of the net capital reduction which is attributable to a decrease in equity capital.

An alternative computation of the adjustment for inadmissible

assets is provided under section 435 (g) (8) (B) in the case of a bank which has a decrease in total assets for the taxable year in excess of the amount on line 21. Under this provision the amount of the adjustment for inadmissible assets on line 22 (e) may not be greater than an amount which bears the same ratio to the decrease in inadmissible assets (excess of line 15 over line 16) as the amount on line 21 bears to the decrease in total assets. The decrease in total assets is determined by computing the excess of the total assets of the taxpayer for the first day of the first taxable year of the taxpayer ending after June 30, 1950, over the average total assets for the taxable year. If the taxpayer uses the alternative adjustment for inadmissible assets, enter the amount so determined on line 22 (e), indicate that such substitution has been made, and submit schedule showing computation.

SCHEDULE EP-3.—ALTERNATIVE EXCESS PROFITS CREDIT OF REGULATED PUBLIC UTILITIES (Section 448)

Section 448 provides an alternative excess profits credit for certain regulated public utilities. This credit, in general, consists of the amount of the corporation's normal tax and surtax plus an amount determined as follows:

(*a*) By computing 6 percent or 7 percent (depending upon the type of utility) of the sum of the adjusted invested capital and the average borrowed capital for the taxable year;

(*b*) By reducing the amount determined under (*a*) by the amount of interest on indebtedness included in borrowed capital. The amount computed under (*a*), as reduced by (*b*), is subject to an adjustment for inadmissible assets.

For the purpose of this credit, adjusted invested capital for any year includes generally the sum of (1) the excess of assets over liabilities at the beginning of the year, (2) the average amount of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital during the taxable year, and (3) the recent loss adjustment; reduced by the average amount of distributions made during the taxable year not out of current earnings and profits. In the case of certain public utilities specified in section 448 (c) (1) (A) and (B), (c) (2), and (c) (4), however, the adjusted invested capital is the sum of the average outstanding common and preferred capital stock accounts for the taxable year and the capital surplus and earned surplus accounts at the beginning of the taxable year as recorded on corporate books of account if such books are maintained in accordance with specified systems of accounts.

The use of the alternative credit is limited to corporations deriving 80 percent or more of their gross income (computed without regard to dividends and capital gains and losses) from certain regulated sources.

If an affiliated group filing a consolidated return includes any corporation which is not a regulated public utility, the alternative credit provided by section 448 may not be used. An affiliated group consisting only of regulated public utilities may file a consolidated return using the alternative credit.

1. Equity capital at beginning of the taxable year.—See instructions 1 and 2, Schedule EP-2 (A).

2. Average daily amount of money and property paid in during the taxable year for stock, or as paid-in surplus, or as a contribution to capital.—See instruction 5, Schedule EP-2 (B).

3. Recent loss adjustment.—Section 437 (f) provides that the recent loss adjustment for any taxable year shall be the excess of the aggregate of the net operating loss for each taxable year in the recent loss period over the aggregate of the net income for each taxable year in such period. For this purpose, the term "recent loss period" means either the base period or the period beginning January 1, 1940, and ending December 31, 1949, whichever results in a higher recent loss adjustment. The net operating loss for any taxable year means the net operating loss as defined in section 122 (a), determined under the law applicable to such taxable year, and the net income for any taxable year means the net income computed with the exceptions, additions, and limitations provided in section 122 (d) (other than paragraph (6) of section 122 (d)) under the law applicable to such taxable year.

See section 437 (f) (3) for special rules in case only part of a taxable year is included in the recent loss period and in the case of recent losses of a component corporation as defined in section 461 (b).

5. Average daily amount of distributions during the taxable year not out of earnings and profits for such year.—See instruction 9, Schedule EP-2 (B).

7. Adjusted invested capital based upon prescribed uniform system of accounts.—If, in the case of a corporation described in section 448 (c) (1) (A), (c) (1) (B), (c) (2), or (c) (4) (see instruction 10), the corporate books of account are maintained in accordance with a system of accounts prescribed by an appropriate regulatory body (or, if not so prescribed, are maintained in accordance with the uniform systems of accounts prescribed by the Federal Power Commission or the National Association of Railway and Utility Commissioners), the adjusted invested capital for such year shall be the sum of the average outstanding common and preferred capital stock accounts for such taxable year and the capital surplus and earned surplus accounts at the beginning of such taxable year as properly recorded on such corporate books of account.

A statement shall be attached setting out all facts relied on in qualifying under this method of computing adjusted invested capital.

(*a*) Average outstanding capital stock for the taxable year.—The average outstanding capital stock for the taxable year is the aggregate of the outstanding common and preferred stock accounts for each day of the year, divided by the number of days in the taxable year.

(*b*) Capital surplus and earned surplus at beginning of the taxable year.—Enter the total amount of the capital surplus and earned surplus accounts as recorded on the corporate books of account as of the beginning of the first day of the taxable year.

8. Average daily amount of borrowed capital for the taxable year.—See instruction 4, Schedule EP-2 (B).

10. Applicable rate under section 448.—Section 448 (c) provides that the applicable rate shall be:

(1) 6 percent in the case of a corporation engaged in the furnishing or sale of—

(A) Electric energy, gas, water, or sewerage disposal services, or

(B) Transportation (not included in paragraph (3)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(C) Transportation (not included in subparagraph (B)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof;

(2) 6 percent in the case of a corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipeline, if subject to the jurisdiction of the Federal Power Commission;

(3) 6 percent in the case of a corporation engaged as a common carrier (A) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Interstate Commerce Commission, or (B) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipeline, if subject to the jurisdiction of the Interstate Commerce Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission, or other similar body of the District of Columbia or of any State;

(4) 7 percent in the case of a corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of paragraph (1);

(5) 7 percent in the case of a corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Civil Aeronautics Board; and

(6) 6 percent in the case of a corporation engaged in the furnishing or sale of transportation by common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under Part III of the Interstate Commerce Act, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933.

12. Reduction for interest on borrowed capital for the taxable year.—Enter on line 12 the amount of the deduction allowable for the taxable year with respect to interest on indebtedness included in the borrowed capital used in computing the average daily amount of borrowed capital on line 8.

14. Average daily amount of inadmissible assets for the taxable year.—Enter on line 14 the average inadmissible assets for the taxable year determined in the manner set out in instruction 16, Schedule EP-2 (B). In the case of a corporation which has computed its adjusted invested capital on line 7 of this schedule, the amount attributable to inadmissible assets shall be determined according to the corporate books of account.

15. Average daily amount of total assets for the taxable year.—The total assets to be entered on line 15 is the aggregate of all assets for each day of the taxable year, divided by the number of days in the taxable year. In the case of a corporation which has computed its adjusted invested capital on line 7 of this schedule, the amount attributable to each asset shall be determined according to the corporate books of account.

SCHEDULE EP-4.—EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL

The excess profits credit based on invested capital is, in general, an amount equal to the sum of—
(*a*) 12 percent of the first $5,000,000 of invested capital,
(*b*) 10 percent of the next $5,000,000 of invested capital, and
(*c*) 8 percent of additional amounts of invested capital.

Invested capital for any year determined under the "asset" method consists generally of the sum of (1) the excess at the beginning of the year of total assets over total liabilities, (2) 75 percent of the average amount of borrowed capital for the year, and (3) the recent loss adjustment. The sum thus determined is increased by the average amount of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital during the taxable year and is reduced by distributions made during the year, which are not out of earnings and profits of the current year. An adjustment is made in the case of a corporation having an invested capital of more than $5,000,000 in order that capital added after the beginning of its first taxable year ending after June 30, 1950, will be included in invested capital at the 12-percent rate. No such adjustment is necessary where the invested capital does not exceed $5,000,000 since the 12-percent rate is applied to the entire invested capital.

The "historical" method for determining invested capital is similar to the method used in the invested capital credit under the World War II excess profits tax law. The historical method, in substance, includes in invested capital money and property previously paid in for stock, or as paid-in surplus, or as a contribution to capital, plus the accumulated earnings and profits of the corporation as of the beginning of the taxable year.

A taxpayer is required to use the asset method in determining its invested capital credit unless it elects the historical method in its return for the taxable year. The election once made is irrevocable with respect to the taxable year for which made. If the historical method is used on the return in determining excess profits tax liability, the taxpayer will be deemed to have elected the historical method. A taxpayer which computes its excess profits tax on its return on the basis of a credit other than the invested capital credit may nevertheless elect the historical method for such year, in the event that the invested capital credit should subsequently become significant in the determination of its excess profits tax liability for such year, by attaching a statement to its return for the taxable year electing the historical method.

1. **Equity capital at beginning of the taxable year.**—The equity capital at the beginning of the taxable year is the total of the assets held by a taxpayer at the beginning of the first day of the taxable year reduced by the total of its liabilities at that time. For determination of amounts to be included in total assets and total liabilities, see instructions 1 and 2, Schedule EP-2 (A).

2. **Average daily amount of money and property paid in during the taxable year for stock, or as paid-in surplus, or as a contribution to capital.**—See instruction 5, Schedule EP-2 (B).

3. **Average daily amount of borrowed capital for the taxable year.**—The average daily amount of borrowed capital for the taxable year is the aggregate of the borrowed capital as of the beginning of each day of the taxable year, divided by the number of days in the taxable year. See instruction 4, Schedule EP-2 (A), for definition of borrowed capital.

4. **Recent loss adjustment.**—Section 437 (f) provides that the recent loss adjustment for any taxable year shall be the excess of the aggregate of the net operating loss for each taxable year in the recent loss period over the aggregate of the net income for each taxable year in such period. For this purpose, the term "recent loss period" means either the base period or the period beginning January 1, 1940, and ending December 31, 1949, whichever results in a higher recent loss adjustment. The net operating loss for any taxable year means the net operating loss as defined in section 122 (a), determined under the law applicable to such taxable year, and the net income for any taxable year means the net income computed with the exceptions, additions, and limitations provided in section 122 (d) (other than paragraph (6) of section 122 (d)), under the law applicable to such taxable year.

See section 437 (f) (3) for special rules in case only part of the taxable year is included in the recent loss period and in the case of recent losses of a component corporation as defined in section 461 (b).

6. **Average daily amount of distributions during the taxable year not out of earnings and profits of such year.**—See instruction 9, Schedule EP-2 (B).

8. **Equity capital at beginning of first taxable year ending after June 30, 1950.**—For determination of amounts to be included in total assets and total liabilities, see instructions 1 and 2, Schedule EP-2 (A).

9. **Excluded capital paid in after beginning of first taxable year ending after June 30, 1950, and prior to the taxable year.**—Section 438 (e) defines "excluded equity capital" as the amount of money or property paid in for stock, or as paid-in surplus, or as a contribution to capital, to the taxpayer—

(*a*) By a corporation in an exchange to which section 112 (b) (3), (4), (5), or (10), or so much of section 112 (c), (d), or (e) as refers to section 112 (b) (3), (4), (5), or (10), is applicable (or would be applicable except for section 371 (g)), or would have been applicable if the term "control" had been defined in section 112 (h) to mean the ownership of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock;

(*b*) By a transferor corporation if immediately after such transaction the transferor and the taxpayer are members of the same controlled group. For definition of controlled group, see instruction 8, Schedule EP-2 (A).

10. **Borrowed capital at beginning of first taxable year ending after June 30, 1950.**—For definition of borrowed capital, see instruction 4, Schedule EP-2 (A).

11. **Excluded borrowed capital at beginning of first taxable year ending after June 30, 1950.**—Section 438 (f) provides that the "excluded borrowed capital" for any day of any taxable year shall be so much of the daily borrowed capital for such day as consists of outstanding indebtedness to a member of a controlled group which includes the taxpayer. For definition of borrowed capital, see instruction 4, Schedule EP-2 (A). For definition of controlled group, see instruction 8, Schedule EP-2 (A).

12. **Average daily amount of excluded borrowed capital for the taxable year.**—The average daily amount of excluded borrowed capital for the taxable year is the aggregate of the excluded borrowed capital at the beginning of each day of the taxable year, divided by the number of days in the taxable year. See instruction 11 for definition of excluded borrowed capital.

13. **Average daily amount of excluded capital paid in during the taxable year.**—The average daily amount of excluded equity capital paid in during the taxable year is the aggregate of the excluded equity capital at the beginning of each day of the taxable year, divided by the number of days in the taxable year. See instruction 9 for definition of excluded equity capital.

22. **Total inadmissible assets at beginning of first taxable year ending after June 30, 1950.**—See instruction 9, Schedule EP-2 (A), for definition of inadmissible assets.

23. **Average daily amount of inadmissible assets for the taxable year.**—The average daily amount of inadmissible assets for the taxable year is the aggregate of the total inadmissible assets for each day of the taxable year, divided by the number of days in such year. For definition of inadmissible assets, see instruction 9, Schedule EP-2 (A).

24 and 25.—An alternative computation of the adjustment for inadmissible assets is provided under section 438 (g) in the case of a bank which has an increase in total assets for the taxable year in excess of the amount on line 24. Under this provision the amount of the adjustment for inadmissible assets on line 25 (e) may not be greater than an amount which bears the same ratio to the increase in inadmissible assets for the taxable year (excess of line 23 over line 22) as the amount on line 24 bears to the increase in total assets for the taxable year. The increase in total assets is determined by computing the excess of the average total assets for the taxable year over the total assets of the taxpayer for the first day of the first taxable year ending after June 30, 1950. If the taxpayer uses the alternative adjustment for inadmissible assets, enter the amount so determined on line 25 (e), indicate that such substitution has been made, and submit schedule showing computation.

INSTRUCTIONS 28 THROUGH 55 APPLY ONLY TO THE HISTORICAL METHOD

28. **Money paid in for stock, or as paid-in surplus, or as a contribution to capital.**—The amount to be entered on line 28 is the total amount of money paid in prior to the beginning of the taxable year. The fact that the money paid in has been lost, destroyed, or otherwise disposed of shall not reduce the invested capital, except as such facts are reflected in the earnings and profits as of the beginning of the taxable year. The term "money

paid in" does not include amounts received as premiums by an insurance company subject to taxation under section 204.

29. **Property paid in for stock, or as paid-in surplus, or as a contribution to capital.**—The amount to be entered on line 29 is the total amount of property paid in prior to the taxable year. The amount of any property paid in is the unadjusted basis to the taxpayer for determining loss upon sale or exchange under the law applicable to the taxable year for which the invested capital is being computed. If the property was disposed of after February 28, 1913, and before such taxable year, such unadjusted basis shall be determined under the law applicable to the year of disposition, but without regard to the value of the property as of March 1, 1913. If the property was disposed of before March 1, 1913, its unadjusted basis shall be considered to be its fair market value at the time paid in.

If the basis to the taxpayer is cost and stock was issued for the property, the cost is the fair market value of such stock at the time of its issuance. If the stock had no established market value at the time of the exchange, the fair market value of the assets of the company at that time should be determined and the liabilities deducted. The resulting net worth will be deemed to represent the total value of the outstanding stock. In determining net worth for the purpose of fixing the fair market value of the stock at the time of the exchange, the property paid in for such stock shall be included in the assets at its fair market value at that time.

If stock having no established market value is issued for intangible property, and it is necessary to determine the fair market value of such property, the following factors, among others, may be taken into consideration in determining such value: (*a*) The earnings attributable to such intangible assets while in the hands of the predecessor owner; and (*b*) any cash offers for the purchase of the business, including the intangible property, at or about the time of its acquisition. A corporation claiming a value for intangible property paid in for stock shall file with its return a full statement of the facts relating to such valuation.

If the property was acquired after December 31, 1920, by a corporation from a shareholder as paid-in surplus or from any person as a contribution to capital, then the basis shall be the same as it would have been in the hands of the transferor if the transfer had not been made. See section 113 (a) (8). If so acquired prior to January 1, 1921, the basis is the fair market value of the property at the time it was paid in. Where the basis is the transferor's basis, those adjustments shall be made to such basis with respect to the period before the property was paid in as are proper under section 115 (1) for determining earnings and profits.

The fact that the property paid in has been lost, destroyed, or otherwise disposed of, shall not reduce the invested capital, except as such facts are reflected in the earnings and profits as of the beginning of the taxable year.

The term "property paid in" does not include amounts received as premiums by an insurance company subject to taxation under section 204.

The fair value of additions and betterments made by the lessee to the physical properties of a lessor railroad corporation which have become the property of the lessor corporation by rejection of its lease (such fair value being determined as of the date such additions and betterments became the property of the lessor) shall be considered as a contribution to capital. Where the value of such improvements cannot be accurately determined by the old records thereof, because lost, incomplete, or inaccurate, the value of such improvements determined by the Interstate Commerce Commission for rate-making purposes shall be used in lieu of such fair value.

30. **Distributions of earnings and profits in stock of the corporation.**—The amount of distributions in stock of the taxpayer or in rights to acquire stock of the taxpayer made prior to the beginning of the taxable year, to the extent to which such distributions are considered to be out of earnings and profits, should be entered on line 30. In determining whether such a distribution is out of the earnings and profits of any taxable year, so much of the distributions (taken in the order of time) made during the first 60 days of the year as does not exceed the accumulated earnings and profits at the beginning of the year (computed without regard to this rule) shall be considered to have been made on the last day of the preceding taxable year. This rule shall not apply with respect to distributions made during the first 60 days of the taxpayer's first taxable year ending after June 30, 1950. In determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution by reason of any distribution made during such taxable year or by reason of the tax imposed by chapter 1 for such year and the determination shall be made without regard to the amount of earnings and profits at the time the distribution was made. If a stock dividend is paid out of capital and not out of earnings and profits, or is of such a character as not to be subject to tax in the hands of a distributee because exempt as a stock dividend either by statute or otherwise, it is not deemed to constitute a distribution and does not reduce the earnings and profits account. See section 115 (h).

31. (*a*) **Accumulated earnings and profits.**—The accumulated earnings and profits as of the beginning of the taxable year should be entered on line 31 (a). In general, the concept of accumulated earnings and profits for the purpose of the invested capital credit under the historical method is the same as for all other purposes of chapter 1. See, for example, section 115 and the regulations prescribed thereunder. In computing accumulated earnings and profits as of the beginning of the taxable year, a taxpayer keeping its books and making its income tax returns on the accrual basis shall subtract the income taxes for the preceding taxable year. If there is a deficit in the accumulated earnings and profits as of the beginning of the taxable year, such deficit shall not be taken into account and the earnings and profits as of the beginning of the taxable year shall be considered to be zero, but subsequent earnings and profits shall be applied against such deficit. Unrealized appreciation in value of property is not a factor in determining earnings and profits. For rules governing the determination of the source of distributions, see instruction 30.

31. (*b*) **Adjustment for transferor's deficit under section 458 (f) (4).**—If a corporation (hereinafter called "transferor") transfers substantially all its property to another corporation formed to acquire such property (hereinafter called "transferee"), and if—

(1) the sole consideration for the transfer of such property is the transfer to the transferor or its shareholders of all the stock of all classes (except qualifying shares) of the transferee (in determining whether the transfer is solely for stock, the assumption by the transferee of a liability of the transferor or the fact that the property acquired is subject to a liability shall be disregarded); and

(2) the basis of the property in the hands of the transferee for the purposes of this subsection is determined by reference to the basis of the property in the hands of the transferor; and

(3) the transferor is forthwith completely liquidated in pursuance of the plan under which the acquisition of the property is made; and

(4) immediately after the liquidation the shareholders of the transferor own all such stock;

then for the purposes of this paragraph, in computing the equity invested capital for any day after the date of the acquisition of the property, the earnings and profits or deficit in earnings and profits of the transferee and the transferor shall be computed as if, immediately before the beginning of the taxable year in which such transfer occurs, the transferee had been in existence and sustained a recognized loss, and the transferor had realized a recognized gain, equal to the portion of the deficit in earnings and profits of the transferor attributable to such property.

31. (*c*) **Increase or decrease under section 472 (d) (1) on account of intercorporate liquidation.**—Where property is received by the transferee in an intercorporate liquidation, section 472 (d) (1) provides that in computing the equity invested capital of the transferee for any day following the completion of such intercorporate liquidation with respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of any property in such intercorporate liquidation, a basis determined to be a cost basis, the earnings and profits or deficit in earnings and profits of the transferee shall be computed as if on the day following the completion of such intercorporate liquidation the transferee had realized a recognized gain equal to the amount of the plus adjustment in respect of such share, or had sustained a recognized loss equal to the amount of the minus adjustment in respect of such share.

For the purpose of such adjustment, an intercorporate liquidation is defined by section 472 (a) as the receipt (whether or not after June 30, 1950) by a corporation of property in complete liquidation of another corporation to which—

(1) the provisions of section 112 (b) (6) or the corresponding provisions of a prior revenue law is applicable; or

(2) a provision of law is applicable prescribing the nonrecognition of gain or loss in whole or in part upon such receipt (including a provision of the regulations applicable to a consolidated income and excess profits tax return, but not including section 112 (b) (7), (9), or (10) or a corresponding provision of a prior revenue law), but only if none of such property so received is a stock or a security in a corporation the stock or securities of which are specified in the law applicable to the receipt of such property as stock or securities permitted to be received (or which would be permitted to be received if they were the sole consideration) without the recognition of gain. The amount of any plus or minus adjustment resulting from an intercorporate liquidation occurring prior to the taxable year should be entered on line 31 (*c*). For definition of "plus adjustment" and "minus adjustment," see section 472 (b).

32. **Increase on account of intercorporate liquidation under section 472 (d) (2).**—Where property is received by the trans-

feree in an intercorporate liquidation, section 472 (d) (2) provides that in computing the equity invested capital of the transferee for any day following the completion of such intercorporate liquidation with respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of any property in such intercorporate liquidation, a basis determined to be a basis other than a cost basis, there shall be treated as an amount includible in equity invested capital the amount of the plus adjustment with respect to such share, or equity invested capital shall be reduced by the amount of the minus adjustment with respect to such share. The amount of such a plus adjustment resulting from an intercorporate liquidation occurring prior to the taxable year should be entered on line 32. See instruction 31 (*c*).

33. **Deficit in earnings and profits of another corporation under section 458 (d) (5).**—In the case of a transferee, as defined in instruction 31 (b), there shall be included in equity invested capital an amount, determined as indicated in such instruction, equal to the portion of the deficit in earnings and profits of a transferor attributable to property received.

35. **Distributions made prior to the taxable year not out of accumulated earnings and profits.**—Section 458 (e) (1) provides that the equity invested capital shall be reduced for distributions made prior to the taxable year not out of accumulated earnings and profits. For rules governing the determination of the source of distributions, see instruction 30.

36. **Earnings and profits of another corporation required to be deducted by section 458 (e) (3).**—Equity invested capital shall be reduced by the amount of the earnings and profits of another corporation which at any prior date were included in accumulated earnings and profits by reason of a transaction described in section 112 (b) through (e), or in the corresponding provisions of a prior revenue law, or by reason of the transfer by such other corporation to the taxpayer of property the basis of which in the hands of the taxpayer is or was determined with reference to its basis in the hands of such other corporation or would have been so determined if the property had been other than money.

37. **Decrease on account of intercorporate liquidation under section 472 (d) (2).**—The amount of any minus adjustment resulting from an intercorporate liquidation occurring prior to the beginning of the taxable year should be entered on line 37. See instructions 31 (c) and 32.

38. **Deficit included in invested capital of another corporation (section 458 (e) (4)).**—In the case of a transferor, as defined in instruction 31 (b), equity invested capital shall be reduced by an amount, determined as indicated in such instruction, equal to the portion of the deficit in earnings and profits of the transferor attributable to property transferred. Any such amount resulting from a transfer occurring prior to the taxable year should be entered on line 38.

41. **Money paid in for stock, or as paid-in surplus, or as a contribution to capital.**—The amount to be entered on line 41 is the average daily amount of money paid in during the year. The average daily amount for the taxable year is the aggregate of money paid in as of the beginning of each day of the year, divided by the number of days in such year. See instruction 28.

42. **Property paid in for stock, or as paid-in surplus, or as a contribution to capital.**—The amount to be entered on line 42 is the average daily amount of property paid in during the year. The average daily amount for the taxable year is the aggregate of the property paid in as of the beginning of each day of the taxable year, divided by the number of days in such year. See instruction 29.

43. **Distributions of earnings and profits (other than earnings and profits of the taxable year) in stock of the corporation.**—The amount to be entered on line 43 is the average daily amount of distributions made during the taxable year of earnings and profits (other than earnings and profits of the taxable year) in stock of the taxpayer or in rights to acquire stock of the taxpayer. The average daily amount is the aggregate of the distributions as of the beginning of each day of the taxable year, divided by the number of days in such year. For rules governing the determination of the source of distributions, see instruction 30.

44. **Increase on account of intercorporate liquidation under section 472 (d) (2).**—The average daily amount of any plus adjustment under section 472 (d) (2) resulting from an intercorporate liquidation occurring during the taxable year should be entered on line 44. See instructions 31 (c) and 32.

45. **Deficit in earnings and profits of another corporation under section 458 (d) (5).**—In the case of a transferee, as defined in instruction 31 (b), there should be entered on line 45 the average daily amount of the portion of the deficit in earnings and profits of the transferor attributable to the property received in a transfer described in section 458 (f) (4) occurring during the taxable year. See instructions 31 (b) and 33.

48. **Distributions not out of earnings and profits of the taxable year.**—Section 458 (e) (2) provides that the equity invested capital for any day in the taxable year shall be reduced for distributions previously made during such taxable year which are not out of the earnings and profits of such taxable year. For the purposes of Schedule EP–4, the average daily reduction is derived by aggregating the reduction for each day of the taxable year and dividing the aggregate by the number of days in the taxable year. For rules governing the determination of the source of distributions, see instruction 30.

49. **Stock distributions from accumulated earnings and profits at beginning of year.**—See instruction 43.

50. **Decrease on account of intercorporate liquidation under section 472 (d) (2).**—The average daily amount of any minus adjustment under section 472 (d) (2) resulting from an intercorporate liquidation occurring during the taxable year should be entered on line 50. See instructions 31 (c) and 32.

51. **Deficit in earnings and profits included in invested capital of another corporation (section 458 (e) (4)).**—The average daily amount of the portion of the deficit in earnings and profits of the transferor, as defined in instruction 31 (b), attributable to property transferred during the taxable year should be entered on line 51. See instruction 38.

54. **75 percent of average borrowed capital.**—See instruction 3.

61. **Average daily amount of inadmissible assets for the taxable year.**—See instruction 9, Schedule EP–2 (A), for definition of inadmissible assets and instruction 16, Schedule EP–2 (B), for method of computing average daily amount of inadmissible assets.

62. **Average daily amount of total assets for the taxable year.**—The amount to be entered on line 62 is the average daily amount of total assets for the taxable year. For rules governing the assets to be taken into account, see instruction 1, Schedule EP–2 (A).

SCHEDULE EP–5

Consisting of parts (A), (B), (C), (D), and (E).

GENERAL INSTRUCTIONS

1. **In general.**—Sections 442 through 446 provide for the determination of an average base period net income computed, in general, on the basis of an industry rate of return, in lieu of the taxpayer's own experience, in certain cases which may be characterized as follows:

(*a*) A corporation commencing business after the beginning of its base period;

(*b*) A corporation experiencing certain types of abnormalities during its base period;

(*c*) A corporation making a substantial change in products or services during the last 3 years of its base period;

(*d*) A corporation making a substantial increase in its capacity for production or operation during the last 3 years of its base period; and

(*e*) A corporation which for its base period was a member of a depressed industry subgroup.

2. **Application required.**—Section 447 (e) provides that the excess profits tax for any taxable year shall be determined without regard to section 442, 443, 444, 445, or 446, unless an application for the benefits of such section, setting forth the grounds for the application of such section in such detail and in such manner as the Secretary may prescribe, is filed by the taxpayer—

(*a*) with its return for the taxable year, or

(*b*) within the period of time prescribed by section 322 (as extended under sections 446 (h) and 447 (d) in cases where a tentative rate of return or a tentative adjusted rate of return has been used and the use of a final rate of return results in a redetermination) for filing claim for credit or refund, and in such case the application of section 442, 443, 444, 445, or 446 shall be subject to the limitations as to the amount of credit or refund prescribed in section 322, or

(*c*) after the period described in (*b*) above, if within the period of limitations for the assessment of a deficiency (as extended under sections 446 (h) and 447 (d) in cases where a tentative rate of return or a tentative adjusted rate of return has been used and the use of a final rate of return results in a redetermination) in the tax imposed by chapter 1 of the Internal Revenue Code for the taxable year, and in such case the application of section 442, 443, 444, 445, or 446 shall not reduce the tax by an amount greater than the deficiency determined without regard to the application of such section,

except that if a petition is filed with the Tax Court for the redetermination of the tax under chapter 1 for the taxable year, the application shall be effective only if filed not later than the date on which the original petition is filed.

Section 447 (e) also provides that section 442, 443, 444, 445, or 446 shall not be applied upon the basis of any grounds other than those set forth in an application filed within the period prescribed in section 447 (e).

The application shall be made on Schedule EP–5 and, if made with the original return, shall be filed with and as a part of Form 1120 for the taxable year. If the application is not filed with the original return, it shall be filed with and as a part of an amended return, or where appropriate, with Form 843.

3. Industry classification.—For the purposes of sections 442 through 446, the industry groups and subgroups are defined in accordance with the specifications shown in the Standard Industrial Classification Manual prepared by the Division of Statistical Standards, Bureau of the Budget.

4. Industry rates of return.—For the purposes of sections 442 through 445, there are provided two types of industry rates of return. The first, for use when 12 or fewer months are to be adjusted under section 442, is designated as the base period yearly rate of return, and the second, for use in all other cases where section 442, 443, 444, or 445 is applicable, is described as the base period rate of return. For purposes of section 446, relating to depressed industry subgroups, an adjusted rate of return is provided.

5. Use of industry rates of return.—Base period yearly rates of return and base period rates of return proclaimed by the Secretary on June 3, 1952, are set forth for each industry classification in Appendix A. The adjusted rates of return proclaimed by the Secretary on June 3, 1952, for depressed industry subgroups are set forth in the instructions for Schedule EP–5 (E). The base period yearly rates of return, the base period rates of return, and the adjusted rates of return, proclaimed by the Secretary on June 3, 1952, relate back as though they had been in effect in place of the tentative rates previously proclaimed by the Secretary. Any application of section 442, 443, 444, 445, or 446 made in accordance with a tentative rate shall be redetermined in accordance with the final rate proclaimed, except that no redetermination is necessary in any case in which the final rate of return is the same as the tentative rate which was previously proclaimed and effective. The periods of limitation prescribed under section 322 and sections 275 and 276 with respect to overpayments or deficiencies in tax caused by such redetermination shall not begin to run prior to such time as the base period yearly rates of return, the base period rates of return, or the adjusted rates of return, as the case may be, are determined and proclaimed except that, if no redetermination is necessary, such periods of limitation are not extended, since no overpayment or deficiency in tax results from the determination of the final rates of return.

6. Average base period net income determined with reference to industry rates of return.—In general, where average base period net income (or a substitute excess profits net income for a period of 12 or fewer months) is computed under section 442, 443, 444, or 445, the taxpayer's total assets are multiplied by the applicable rate of return for the taxpayer's industry classification and the resulting amount is reduced by an adjustment for interest paid or incurred by the taxpayer. Similarly, where average base period net income is determined under section 446 in the case of a member of a depressed industry subgroup, the taxpayer's total assets are multiplied by the adjusted rate of return for the taxpayer's depressed industry subgroup and the resulting amount is adjusted for interest paid or incurred.

7. Definition of total assets.—For purposes of sections 442 through 446, the term "total assets" for any day means the sum of the cash and other property (other than inadmissible assets and loans to members of a controlled group as defined in section 435 (f) (4) held by the taxpayer at the end of such day in good faith for purposes of the business. The amount thus computed shall be reduced (but not below zero) by the amount of any indebtedness (other than borrowed capital) to a member of a controlled group which includes the taxpayer. For definition of "inadmissible assets," see instruction 9, Schedule EP–2 (A). For definition of "controlled group," see instruction 8, Schedule EP–2 (A). Property shall be included in an amount equal to its adjusted basis for determining gain upon sale or exchange, except that the adjusted basis of secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property shall be determined without regard to value as of March 1, 1913. In determining total assets, so much of the distributions to shareholders made during the first 60 days of any taxable year (other than the taxpayer's first taxable year ending after June 30, 1950) as does not exceed the accumulated earnings and profits at the beginning of the year shall be considered to have been made on the last day of the preceding taxable year. For special rule in the case of improvements by a lessee to properties of a lessor railroad corporation, see section 441 (j).

In the case of a taxpayer electing to compute income from installment sales or installment sales obligations on the accrual method of accounting, or income from long-term contracts on the percentage of completion method of accounting, see section 441 (h).

8. Definition of base period.—For purposes of sections 442 through 446, the "base period" is the base period defined in section 435 (b) and is the period January 1, 1946, through December 31, 1949, except in the case of a taxpayer whose first taxable year ending after June 30, 1950, was preceded by a taxable year which began before January 1, 1950, and ended January 31, February 28, or March 31, 1950. In the latter cases the base period is the 48 consecutive months ending with the close of January, February, or March 1950. In the case of a corporation which is an acquiring corporation within the meaning of section 461 (a), such corporation is considered to have been in existence and to have had taxable years for any period during which it or any of its component corporations was in existence, and it is considered to have commenced business on the earliest date on which it or any of its component corporations commenced business. See section 461 (d).

SCHEDULE EP–5 (A)—NEW CORPORATIONS (Section 445)

A taxpayer which commenced business after the first day of its base period and which is not an ineligible corporation, is considered to be a new corporation and may apply for the benefits of section 445. For rules governing an application, see general instruction 2, Schedule EP–5. For definition of "base period," see general instruction 8, Schedule EP–5.

For special rules governing the application of section 445 in the case of an acquiring corporation, see section 462 (g), and in the case of a component corporation, see section 461 (c).

If a taxpayer, on or after December 1, 1950, and prior to the end of its third taxable year, acquires any properties in any of the transactions described in paragraphs (*a*), (*b*), or (*c*), below, it shall be deemed an "ineligible corporation" and it shall not, for the taxable year in which such acquisition occurs or for succeeding taxable years, be entitled to the benefits of section 445 except under the circumstances and subject to the limitations provided in section 462 (g). The transactions to which this paragraph applies are—

(*a*) The acquisition by the taxpayer from another corporation of properties the basis of which in its hands is determined by reference to the basis of such properties to the transferor; or

(*b*) The acquisition by the taxpayer of a substantial part of its assets from another corporation, or of a substantial part of the properties of another corporation, if 50 percent or more in value of the outstanding stock or outstanding voting stock of the taxpayer is directly or indirectly owned, at the time of such acquisition, by individuals owning directly or indirectly 50 percent or more in value of the outstanding stock, or outstanding voting stock of the transferor; or

(*c*) The acquisition by the taxpayer of a substantial part of the properties distributed on or after December 1, 1950, by another corporation, if such properties constituted a substantial part of the business assets of such other corporation, and if 50 percent or more in value of the outstanding stock or outstanding voting stock of the taxpayer is owned directly or indirectly by individuals who at the time of such distribution owned directly or indirectly 50 percent or more in value of the outstanding stock or outstanding voting stock of such other corporation.

For the purposes of (*b*) and (*c*) above, the provisions of section 503 are applicable in determining the ownership of stock.

The base period capital addition is not available to a taxpayer computing average base period net income under section 445; accordingly, no entry should be made on line 50, Schedule EP–2. The net capital addition or reduction as computed under section 435 (g) is, however, applicable to such a taxpayer in accordance with the following modifications:

(*a*) In the case of a taxpayer computing its average base period net income under section 445 for any of its first three taxable years, lines 1 through 10 of Schedule EP–5 (A) are applicable and the net capital addition or reduction, as computed on line 19 or 23 of Schedule EP–2 (B), should be entered on line 2 or 4 of Schedule EP–5 (A), whichever is applicable. In such case no entry should be made on line 53 or 55 of Schedule EP–2.

(*b*) In the case of a taxpayer computing its average base period net income under section 445 for its fourth taxable year, or for any taxable year subsequent thereto, lines 11 through 16 of Schedule EP–5 (A) are applicable. If the day following the close of the

taxpayer's third taxable year is later than the first day of its first taxable year ending after June 30, 1950, then the date used for determining the amount of equity capital on line 1, borrowed capital on line 3, and inadmissible assets on line 15 of Schedule EP–2 (B) is such later day. The same day should be used in lieu of the day otherwise specified in instructions 12 and 13 of Schedule EP–2 (B) in determining the amount to be entered on lines 12 and 13 of that schedule and in lieu of the day specified in the instructions for Schedule EP–2 (B), relating to an increase in the capital additions under section 435 (g) (9). Schedule EP–2 (B) should be altered accordingly and the amount so determined on line 20 or 24 of that schedule should be entered on line 53 or 55, whichever is applicable, of Schedule EP–2.

1. **Total assets at end of last taxable year ending prior to July 1, 1950.**—The total assets held by the taxpayer at the end of its last taxable year ending prior to July 1, 1950, should be entered on line 1. If the taxpayer's first taxable year ended after June 30, 1950, do not make an entry on this line. For definition of "total assets," see general instruction 7, Schedule EP–5.

2. **Net capital addition for current taxable year.**—For the purpose of line 2, the net capital addition may be computed using Schedule EP–2 (B) as a guide but with the following changes: (*a*) disregard the 75 percent limitation appearing on lines 7, 11, and 13, and (*b*) enter on line 19 the excess of line 17 over line 18 (a). The amount so computed on line 19 of Schedule EP–2 (B) should be entered on line 2 of this schedule. In certain cases the net capital addition may be further increased under the provisions of section 435 (g) (9) relating to a decrease in inadmissible assets. See general instructions for this schedule and instructions for Schedule EP–2 (B).

4. **Net capital reduction for current taxable year.**—For the purpose of line 4, the net capital reduction may be computed by using Schedule EP–2 (B) as a guide but with the following changes: (*a*) disregard the 75-percent limitation appearing on line 7, 11, or 13, and (*b*) enter on line 23 the excess of line 21 over line 22 (a). The amount entered on line 23 of Schedule EP–2 (B) should be entered on line 4 of this schedule. See general instructions for this schedule and instructions for Schedule EP–2 (B).

6. **Taxpayer's industry classification and base period rate of return.**—Enter on this line the industry classification to which is attributable the largest amount of the taxpayer's gross receipts for the taxable year. See Appendix A for list of industry classifications. For definitions of "gross receipts," see instruction 40, Schedule EP–2. Also enter on line 6 the applicable base period rate of return for the taxpayer's industry classification.

8. **Reduction for interest.**—The amount to be entered on line 8 is the total interest paid or incurred by the taxpayer for the 12 months ending with the last day of the taxable year for which the return is filed. Such amount should include interest on all indebtedness, irrespective of whether it constitutes borrowed capital within the meaning of section 439 (b).

11. **Total assets at end of last taxable year ending prior to July 1, 1950, or at end of taxpayer's third taxable year, whichever is later.**—The total assets held by the taxpayer at the end of its last taxable year ending prior to July 1, 1950—or if the taxpayer's third taxable year ended on a later date, the total assets held by the taxpayer at the end of its third taxable year—should be entered on this line. For definition of "total assets," see general instruction 7, Schedule EP–5.

12. **Taxpayer's industry classification and base period rate of return.**—Enter on this line the industry classification to which is attributable the largest amount of the taxpayer's gross receipts for the taxpayer's third taxable year. See Appendix A for list of industry classifications. For definition of "gross receipts," see instruction 40, Schedule EP–2. Also enter on line 12 the base period rate of return for the industry classification applicable to the taxpayer for its third taxable year.

14. **Reduction for interest.**—The amount to be entered on line 14 is the total interest paid or incurred by the taxpayer for the 12 months ending with the day for which the taxpayer's total assets are computed for purposes of line 11. Such amount shall include interest on all indebtedness, irrespective of whether it constitutes borrowed capital within the meaning of section 439 (b).

SCHEDULE EP–5 (B).—ABNORMALITIES DURING BASE PERIOD (Section 442)

A taxpayer which commenced business on or before the first day of its base period may apply for the benefits of section 442 if it establishes that, for any taxable year within, or beginning or ending within, its base period—

(*a*) Normal production, output, or operation was interrupted or diminished because of the occurrence, either immediately prior to or during such taxable year, of events unusual and peculiar in its experience, or

(*b*) The business of the taxpayer was depressed because of temporary economic circumstances unusual in the case of such taxpayer. In general, if the excess profits net income of 12 or fewer of the 36 months selected in the base period is affected by an abnormality, a substitute excess profits net income computed on the basis of the industry rate of return may, under the conditions specified in section 442 (c), be used in lieu of the actual excess profits net income of such 12 or fewer months. If the excess profits net income of more than 12 of the 36 months is affected by an abnormality, an average base period net income computed on the basis of the industry base period rate of return may, under the conditions specified in section 442 (d), be substituted for the taxpayer's entire base period net income. Section 442 (h) provides, as an alternative to section 442 (c) or (d), that a substitute excess profits net income may be used for any 12 months of the 36 months selected in the base period, if such 12 months are preceded by an abnormality and if the excess profits net income of such 12 months is less than 35 percent of one half the aggregate excess profits net income for the remaining 24 months of the 36 selected. For rules governing an application, see general instruction 2, Schedule EP–5. For definition of "base period," see general instruction 8, Schedule EP–5.

For special rules governing the application of section 442 in the case of an acquiring corporation, see section 462 (d), and in the case of a component corporation, see section 461 (c).

For purposes of section 442, activities comprised within the meaning of production, output, or operation include the rendering of services if the taxpayer renders service rather than manufactures or markets tangible products. Normal production, output, or operation, means the level of production, output, or operation, customary for the taxpayer. The interruption or diminution must be a direct result of events unusual and peculiar in the experience of the taxpayer, such events occurring in or immediately prior to such taxable year.

Only those economic circumstances which were temporary in the sense that they had little perceptible long-range effect on the taxpayer's business, and which affected the taxpayer unusually, as distinguished from those economic events which were of a chronic or continuing character, are within the scope of section 442.

The base period capital addition, in the case of a taxpayer computing its average base period net income under section 442, is subject to the following rules:

(*a*) If more than 12 of the 36 months in the period subject to adjustment (more than 12 of the months entered on line 4, Schedule EP–5 (B)) fall within taxable years the excess profits net income of which was adversely affected by an abnormality, the base period capital addition is zero.

(*b*) If 12 or fewer of the 36 months in the period subject to adjustment (12 or fewer of the months entered on line 4, Schedule EP–5 (B)) fall within a taxable year or years the excess profits net income of which was adversely affected by an abnormality, and

(1) If a substitute excess profits net income (in excess of 110 percent of excess profits net income) is computed for any part of the taxpayer's first taxable year ending after June 30, 1950, or for any part of the immediately preceding taxable year, the base period capital addition is zero;

(2) If a substitute excess profits net income (in excess of 110 percent of excess profits net income) is computed for any part of the earlier of the taxpayer's two taxable years immediately preceding its first taxable year ending after June 30, 1950, the base period capital addition shall be the excess of the amount in column 1, line 11, Schedule EP–2 (A) over the amount in column 2, line 11, of that schedule. Twelve percent of such amount should be entered on line 50, Schedule EP–2.

(3) If neither (1) nor (2) applies, the base period capital addition is the amount determined on line 14, Schedule EP–2 (A).

(*c*) If the taxpayer computes an average base period net income by reference to section 442 (h), the rules stated in (b) (1), (2), and (3), above, without regard to the 110 percent qualification therein, shall be applicable in determining the base period capital addition.

The net capital addition or reduction, computed under section 435 (g) in Schedule EP–2 (B), is applicable to a taxpayer computing its average base period net income under section 442, and the amount so determined on line 20 or 24 of that schedule should be entered on line 53 or 55, whichever is applicable, of Schedule EP–2.

1. Excess profits net income or deficit.—The amount to be entered on line 1 is the amount of excess profits net income, or deficit in excess profits net income, shown on line 28, Schedule EP–2, for each taxable year within, or beginning or ending within, the taxpayer's base period.

2. Monthly average.—The monthly average to be entered is the excess profits net income (or deficit in excess profits net income) for each taxable year for which an entry is made on line 1, divided by the number of months in such taxable year.

3. Number of months after December 31, 1945, and before January 1, 1950, in each taxable year.—Where the base period consists of the 48 months beginning January 1, 1946, and ending December 31, 1949, the number of months to be entered on line 3 is the number of months within such 48-month period falling within each taxable year for which an entry is made on line 1. In a case where the base period is the 48-month period ending January 31, February 28, or March 31, 1950, the number of months to be entered in line 3 is the number of months, within the applicable 48-month period, falling within each of the taxable years for which an entry is made on line 1. For definition of "base period," see general instruction 8, Schedule EP–5.

4. Enter from 3 the highest 36 consecutive months or the 36 months remaining after eliminating lowest 12 consecutive months.—The number of months to be entered on line 4 should total 36 and should consist of either (*a*) the 36 consecutive months entered on line 3 the retention of which will produce the highest aggregate excess profits net income (or the lowest aggregate deficit in excess profits net income), or (*b*) the 36 months remaining after eliminating from the months entered on line 3 the 12 consecutive months the elimination of which will produce the highest aggregate excess profits net income (or the lowest aggregate deficit in excess profits net income). For the purpose of determining the number of months in each taxable year to be entered on this line, deficits in excess profits net income should not be increased to zero.

5. Number of months on line 4 in a taxable year the excess profits net income of which was adversely affected by an abnormality.—The number of months to be entered on line 5 should be those months entered on line 4 which fall within a taxable year the excess profits net income of which was reduced (or the deficit in excess profits net income of which was increased) by an event or circumstance included in the grounds upon which the application for the benefits of section 442 is based. If the total number of months entered on line 5 is 12 or less, the taxpayer should complete lines 7 through 17. If the total number of months entered on line 5 is more than 12, the taxpayer should complete lines 22 through 29.

6. Eligibility to use section 442 (h).—A taxpayer may determine eligibility to use section 442 (h) by selecting a period of 12 months, as shown in (*a*) below, and by ascertaining whether the requirements set forth in (*b*) below are met.

(*a*) The 12 months for the purposes of section 442 (h) may be determined by selecting from the months appearing on line 4, either the 12 consecutive months the elimination of which produces the highest aggregate excess profits net income (or lowest aggregate deficit in excess profits net income) or the 12 months which remain after eliminating the 24 months with the highest aggregate excess profits net income or lowest aggregate deficit. For the purpose of making this selection only, the 36 months on line 4 shall be considered a period of 36 consecutive months.

(*b*) In order to qualify for the benefits of section 442 (h), it must be shown that the aggregate excess profits net income for the 12 months thus selected is less than 35 percent of one-half of the aggregate excess profits net income for the 24 months remaining after such selection. It must also be shown that normal production, output, or operation was interrupted or diminished because of the occurrence of events unusual or peculiar in the experience of the taxpayer, within 12 months preceding either—

(i) the first day of the 12 month period selected, or

(ii) if the 12 months selected are not consecutive, the first day of any period of 6 or more of such months which are consecutive.

If the taxpayer is eligible for application of section 442 (h), enter on line 6 the 12 months selected as shown above.

7. Total assets at end of each taxable year for which an entry is made on line 5 or 6.—The total assets held by the taxpayer at the end of the taxable year or years for which a number (other than zero) was entered on line 5 or 6, whichever is applicable, should be entered in the appropriate column on line 7, except that if an entry was made on line 5 or 6 for a number of months in a taxable year ending after June 30, 1950, the date for which the taxpayer's total assets should be ascertained with respect to such number of months is the last day of its last taxable year ending before July 1, 1950. For definition of "total assets," see general instruction 7, Schedule EP–5.

8. Taxpayer's industry classification and base period yearly rate of return for each taxable year for which an entry is made on line 7.—Enter on this line the industry classification to which is attributable the largest amount of the taxpayer's gross receipts for the taxable year within which falls the last month for which a substitute excess profits net income is determined. See Appendix A for list of industry classifications. For definition of "gross receipts" see instruction 40, Schedule EP–2. Also enter on line 8 the applicable base period yearly rate of return for the taxpayer's industry classification. In the case of a taxable year beginning in 1945 and ending in 1946, the base period rate of return for 1946 shall be used. In the case of a taxable year beginning in 1949 and ending in 1950, the base period rate of return for 1949 shall be used. In the case of any other taxable year of the taxpayer, the base period rate of return for the year in which falls the greater number of days in such taxable year of the taxpayer shall be used.

10. Reduction for interest.—For each amount entered on line 9 there should be entered on line 10 an amount equal to the total interest paid or incurred by the taxpayer for the 12 months beginning with the first day of the taxable year within which fall the months entered on line 5 or 6, whichever is applicable. Such amount should include interest on all indebtedness, irrespective of whether it constitutes borrowed capital within the meaning of section 439 (b).

13. 110 percent of line 2.—The amount to be entered on line 13 is an amount equal to 110 percent of the amount of monthly average excess profits net income shown on line 2 (only for years for which an entry is made on line 5). In the event that the applicable amount on line 2 is a deficit in excess profits net income such deficit should be increased to zero.

14. Substitute excess profits net income.—For any taxable year with respect to which an entry has been made on line 5 and the amount shown on line 12 exceeds the amount shown on line 13, the substitute excess profits net income may be used in lieu of the actual excess profits net income. The substitute excess profits net income is derived in any such case by multiplying the amount shown on line 12 for such taxable year by the number of months entered for that year on line 5.

18 through 21. Alternative average base period net income under section 442 (h).—Lines 18 through 21 are for the use of a taxpayer computing an alternative average base period net income under section 442 (h). See instruction 6.

Enter on line 18 the substitute excess profits net income for the 12 months selected for adjustment and entered on line 6. This amount is the product of line 12 multiplied by line 6.

Enter on line 19 the product of line 2 (substituting zero for any deficit) multiplied by the excess of line 4 over line 6. This amount is the excess profits net income for the 24 months remaining after selection of the 12 months entered on line 6.

Enter on line 20 the aggregate of the amounts on lines 18 and 19 divided by three. The amount on line 20 shall not be in excess of 50 percent of the aggregate of the amounts entered on line 19.

22. Total assets at end of each taxable year ending before July 1, 1950.—The amount to be entered on line 22 is the total assets held by the taxpayer on the last day of each of its taxable years ending after the beginning of its base period and prior to the first day of its first taxable year ending after June 30, 1950. For definition of "total assets," see general instruction 7, Schedule EP–5.

23. Interest paid or accrued for each taxable year for which an entry is made on line 22.—The amount to be entered on line 23 is the total interest paid or incurred by the taxpayer for each of the taxable years for which an amount of total assets was entered on line 22. Such amount should include interest on all indebtedness, irrespective of whether such indebtedness constitutes borrowed capital within the meaning of section 439 (b).

24. Average of total assets.—Enter the aggregate of the amounts on line 22, divided by the number of such amounts.

25. Taxpayer's industry classification and base period rate of return.—Enter on this line the industry classification to which is attributable the largest amount of the taxpayer's gross receipts for its last taxable year beginning within its base period. See Appendix A for list of industry classifications. For definition of "gross receipts," see instruction 40, Schedule EP–2. Also enter on line 25 the applicable base period rate of return for the taxpayer's industry classification.

27. Interest adjustment.—The amount to be entered on line 27 is the average yearly amount of interest paid or incurred by the taxpayer for all taxable years for which the taxpayer's total assets

were determined on line 22. The average yearly amount of interest is computed by aggregating the amounts entered on line 23, dividing by the total number of months in the taxable years involved, and multiplying the quotient by 12.

29. **110 percent of average base period net income computed under section 435 (d).**—Section 442 (d) shall have no application unless the amount of the average base period net income determined under section 442 (d) is in excess of 110 percent of the taxpayer's average base period net income computed under the general average method. If line 28 exceeds line 29, the taxpayer's average base period net income is the amount on line 28.

SCHEDULE EP-5 (C)—CHANGE IN PRODUCTS OR SERVICES (Section 443)

A taxpayer which commenced business on or before the first day of its base period and which establishes with respect to any taxable year that—

(*a*) during so much of its three immediately preceding taxable years as falls within the 36-month period ending on the last day of its base period, there was a substantial change in the products or services furnished by the taxpayer, and

(*b*) more than 40 percent of its gross income or more than 33 percent of its net income for such taxable year is attributable to one or more of the new products or services, and

(*c*) its average monthly excess profits net income for such taxable year exceeds 125 percent of its average monthly excess profits net income for the taxable years ending within its base period and prior to the taxable year in which occurred the first change to which gross income or net income is attributed for the purpose of the requirements stated in (*b*), may, for the earliest taxable year with respect to which the foregoing requirements are satisfied (and for subsequent taxable years), apply for the benefits of section 443. For rules governing such an application, see general instruction 2, Schedule EP-5. For definition of "base period," see general instruction 8, Schedule EP-5. If a change in products or services is considered to have occurred on the last day of the base period by reason of a commitment described in section 443 (f) (2), include in statement submitted with respect to application of section 443 full details concerning facilities constructed for the production of the new product and a copy of the contract evidencing the commitment.

For special rules governing the application of section 443 in the case of an acquiring corporation, see section 462 (e), and in the case of a component corporation, see section 461 (c).

Requirements (*a*), (*b*), and (*c*), above, must all be met with respect to a single taxable year.

For purposes of requirement (*a*), the change in products or services must be substantial. It must take the form of a product or a service which is new to the taxpayer and not a mere improvement or change in style. The discontinuance of a product or service previously furnished by the taxpayer is not a change in products or services for purposes of section 443.

For purposes of requirement (*b*), if more than one substantial change in products or services occurred during the prescribed period, the gross income or net income attributable to new products or services may be aggregated in determining whether the amount attributable to new products or services meets the stated percentages of total gross income or total net income, as the case may be.

For purposes of requirement (*c*), the average monthly excess profits net income for any year shall be computed by making the adjustments provided in section 433 (b) as though section 433 (b) were applicable to all taxable years, and by dividing by the number of months in the year. The average monthly excess profits net income for any period of two or more taxable years is the aggregate of the excess profits net income (computed by making the adjustments provided in section 433 (b) as though section 433 (b) were applicable to all taxable years) for all taxable years within the period, less the amount of any deficits in excess profits net income (similarly computed) for all taxable years within the period, divided by the number of months in the taxable years in the period. The average monthly excess profits net income determined for any period shall in no case be less than zero.

The base period capital addition is not available to a taxpayer computing average base period net income under section 443; accordingly, no entry should be made on line 50, Schedule EP-2. The net capital addition or reduction as computed under section 435 (g), however, is applicable to such a taxpayer in accordance with the following modifications:

(1) If the taxable year in which the taxpayer first meets requirements (*a*), (*b*), and (*c*), above, is a year ending after June 30, 1950, no net capital addition or reduction will be applicable in computing the excess profits credit based on income for that taxable year. Accordingly, no entry is to be made on line 53 or 55 of Schedule EP-2.

(2) In determining the net capital addition or reduction under section 435 (g) for a taxable year subsequent to the year in which the taxpayer first met requirements (*a*), (*b*), and (*c*), above, the date used for determining the amount of equity capital, on line 1, borrowed capital on line 3, and inadmissible assets on line 15, of Schedule EP-2 (B) should be the first day of the taxable year immediately following such year in which the requirements were first met, or the first day of the taxpayer's first taxable year ending after June 30, 1950, whichever is later. The same day should be used in lieu of the day otherwise specified in instructions 12 and 13, Schedule EP-2 (B), in determining the amount to be entered on lines 12 and 13 of that schedule and in lieu of the day specified in the instructions for Schedule EP-2 (B) relating to an increase in the capital addition under section 435 (g) (9). Schedule EP-2 (B) should be altered accordingly and the amount so determined on lines 20 or 24 of that schedule should be entered on line 53 or 55, whichever is applicable, of Schedule EP-2.

1. **Allocation of gross income and net income for the taxable year with respect to which taxpayer claims qualification under section 443 (a).**—The taxable year with respect to which the taxpayer claims qualification should be designated on line 1 (a). This year must be the earliest year with respect to which the taxpayer meets the requirements of section 443 (a) with respect to gross income or net income attributable to a substantial change in products or services which occurred within one or more of its three immediately preceding taxable years and within the last 36 months of the base period. Such year must also reflect a 25 percent increase in average monthly excess profits net income over the average monthly excess profits net income of the taxable years ending within the base period but prior to the year in which occurred the first change in products or services upon which the taxpayer relies. The amount to be entered in column 1 of line 1 (b) is the total amount of gross income for the taxable year without adjustment under section 433 (a). The amount allocated to the new products or services should be similarly determined and the allocation should be made in conformity with good accounting practice. The amount to be entered in column 1 of line 1 (c) is the net income for the year determined under section 21. In column 2 of line 1 (c) there should be entered the amount of net income for the taxable year attributable to the new products or services, such allocation also being made in conformity with good accounting practice.

2 through 4. **Increase in average monthly excess profits net income.**—The amount of the taxpayer's excess profits net income for the taxable year with respect to which qualification under section 443 (a) is claimed should be entered on line 2 and the monthly average thereof computed and entered in column 3 of that line. The monthly average excess profits net income for the taxable years ending within the base period and prior to the taxable year or years in which occurred the first change in products or services upon which the taxpayer relies, should be entered on line 3 and the monthly average thereof computed and entered in column 3 of that line.

5. **Total assets at end of taxable year designated on line 1 (a) or at end of last taxable year ending prior to July 1, 1950, whichever is later.**—For definition of "total assets," see general instruction 7, Schedule EP-5.

6. **Taxpayer's industry classification and base period rate of return.**—Enter on this line the industry classification to which is attributable the largest amount of the taxpayer's gross receipts for the taxable year which includes the day for which the amount of the taxpayer's total assets were determined on line 5. See Appendix A for list of industry classifications. For definition of "gross receipts," see instruction 40, Schedule EP-2. Also enter on line 6 the base period rate of return for the taxpayer's industry classification.

8. **Reduction for interest.**—The amount to be entered on line 8 is the total interest paid or incurred by the taxpayer for the 12 months ending with the day for which the taxpayer's total assets were determined for purposes of line 5. Such amounts should include interest on all indebtedness, irrespective of whether it constitutes borrowed capital within the meaning of section 439 (b).

SCHEDULE EP–5 (D)—INCREASE IN CAPACITY FOR PRODUCTION OR OPERATION (Section 444)

A taxpayer which commenced business on or before the first day of its base period and which establishes that during the 36-month period ending on the last day of its base period there was an increase in its capacity for production or operation, as defined in section 444 (b), may apply for the benefits of section 444. For rules governing an application, see general instruction 2, Schedule EP–5. For definition of "base period," see general instruction 8, Schedule EP–5.

For special rules governing the application of section 444 in the case of an acquiring corporation, see section 462 (f), and in the case of a component corporation, see section 461 (c).

For the purposes of section 444, an increase in capacity for production or operation is deemed to have occurred if the taxpayer establishes that it made an addition (or additions) to its facilities or replaced all (or a part of) its existing facilities, and that—

(*a*) As a result of such additions or replacements, its capacity for production or operation on the last day of its base period was 200 percent or more of its capacity for production or operation on the last day of the twelfth month of its base period, or

(*b*) (1) As a result of such additions or replacements, its capacity for production or operation on the last day of its base period was 150 percent or more of its capacity for production or operation on the last day of the twelfth month of its base period, and (2) the adjusted basis for determining gain upon sale or exchange of its total facilities on the last day of its base period was 150 percent or more of the adjusted basis for determining gain upon sale or exchange of its total facilities on the last day of the twelfth month of its base period, or

(*c*) The basis (unadjusted) for determining gain upon sale or exchange of its total facilities on the last day of its base period was 200 percent or more of the basis (unadjusted) for determining gain upon sale or exchange of its total facilities on the last day of the twelfth month of its base period.

The term "facilities" means real property and depreciable tangible property held by the taxpayer in good faith for the purposes of the business.

For the purposes of (*a*) and (*b*), above, the term "capacity for production or operation" means the capacity to produce or to operate rather than the level of production or operation actually achieved.

For the purposes of (*b*) and (*c*), above, the adjusted basis or the unadjusted basis of all "facilities" is to be included, both at the beginning and at the end of the 36-month period, irrespective of whether the facility is one directly involved in any determination of capacity for production or operation.

If an increase in capacity is considered to have occurred on the last day of the base period by reason of a commitment described in section 444 (f) (2), include in the statement submitted with respect to the application of section 444 full details with respect to the facilities completed after the last day of the base period and during the first excess profits tax year, and circumstances evidencing the commitment.

The base period capital addition determined under section 435 (f) is not available to a taxpayer computing its average base period net income under section 444. Accordingly, no entry should be made on line 50, Schedule EP–2. The net capital addition or reduction computed on Schedule EP–2 (B), however, is applicable to such a taxpayer and the amount so determined on line 20 or 24 of that schedule should be entered on line 53 or 55, whichever is applicable, of Schedule EP–2.

1. **Capacity for production or operation.**—Enter in columns 1 and 2 of line 1 the total capacity for production or operation as of the last day of the twelfth month in the base period and as of the last day of the base period. Use the same unit of measurement (tons, gallons, yards, etc.) in computing capacity for each date.

2 and 3. **Basis of total facilities.**—For definition of the term "facilities," see general instructions for this schedule.

4. **Total assets at end of last taxable year ending prior to July 1, 1950.**—The amount to be entered on line 4 is the total amount of the assets held by the taxpayer at the close of its last taxable year ending prior to July 1, 1950. For definition of "total assets," see general instruction 7, Schedule EP–5.

5. **Taxpayer's industry classification and base period rate of return.**—Enter on this line the industry classification to which is attributable the largest amount of the taxpayer's gross receipts for its last taxable year ending before July 1, 1950. See Appendix A for list of industry classifications. For definition of "gross receipts," see instruction 40, Schedule EP–2. Also enter on line 5 the base period rate of return for the taxpayer's industry classification.

7. **Reduction for interest.**—The amount to be entered on line 7 is the total interest paid or incurred by the taxpayer for the twelve months ending with the last day of the taxpayer's last taxable year ending before July 1, 1950. Such amount should include interest on all indebtedness, irrespective of whether it constitutes borrowed capital within the meaning of section 439 (b).

SCHEDULE EP–5 (E)—DEPRESSED INDUSTRY SUBGROUPS (Section 446)

A taxpayer which commenced business on or before the first day of its base period and which is a member of a depressed industry subgroup may apply for the benefits of section 446. For rules governing an application, see general instruction 2, Schedule EP–5. For definition of "base period," see general instruction 8, Schedule EP–5.

For special rules governing the application of section 446 in the case of an acquiring corporation, see section 462 (h), and in the case of a component corporation, see section 461 (c). For purposes of section 446, a taxpayer is a member of a depressed industry subgroup if more than 50 percent of the aggregate of its gross receipts for the taxable years beginning with or within its base period is attributable to such subgroup.

The base period capital addition determined under section 435 (f) is not available to a taxpayer computing its average base period net income under section 446 and no entry should be made on line 50, Schedule EP–2. The net capital addition or reduction computed on Schedule EP–2 (B), however, is applicable to such a taxpayer and the amount so determined on line 20 or 24 of that schedule should be entered on line 53 or 55, whichever is applicable, of Schedule EP–2.

The depressed industry subgroups and the final adjusted rates of return are—

Aircraft and parts—Standard Industrial Classification groups 3721, 3722, 3723, and 3729.—(1) Manufacturing or assembling complete aircraft such as airplanes, gliders, dirigibles, and balloons; (2) manufacturing aircraft engines and engine parts such as engine mount parts, air scoops, turbo superchargers, lubricating systems, cooling systems, exhaust systems, nonelectric starters, and aircraft engine pumps; (3) manufacturing aircraft propellers and propeller parts; (4) manufacturing aircraft parts such as air frame assemblies, wing assemblies, flaps and dive brakes, elevators, fins, rudders, other empennage assemblies, and alighting assemblies; and (5) manufacturing auxiliary equipment, such as de-icing equipment, bomb racks, turrets and turret drives, parachutes, targets, link trainers, and other auxiliary equipment specifically adapted for aircraft. *This industry subgroup does not include manufacturing aeronautical instruments or manufacturing aeronautical electrical equipment.*

The adjusted rate of return for this industry subgroup is 11.3 percent.

Engines and turbines, except automotive, aircraft, and railway—Standard Industrial Classification groups 3511 and 3519.—Manufacturing steam engines (*except locomotives*), steam turbines, water wheels, and water turbines; and manufacturing Diesel or semi-Diesel engines, or other internal combustion engines, *except aircraft engines and automobile engines.*

The adjusted rate of return for this industry subgroup is 12.8 percent.

Metalworking machinery, including machine tools—Standard Industrial Classification groups 3541, 3542, and 3543.—(1) Manufacturing power-driven machine tools that shape metal by grinding or progressively cutting away chips (such as boring, broaching, drilling, gear-cutting and finishing, grinding, milling and planing machines; lathes, shapers, and slotters; honing and lapping, polishing and buffing, sawing and cutting-off, contour-sawing and filing, tapping, threading, and rifling machines, and replacement and repair parts for machine tools); (2) rebuilding of machine tools; (3) manufacturing machinery for shaping, pressing, forging, or bending metal where the shaping action of such machines is not dependent upon a cutting tool (such as

bending machines; can forming and soldering, and other sheet-metal working machinery; die-casting machines; forging machines, such as drop hammers (impression die), forging hammers (flat die), forging presses, bulldozers, and upsetters; portable power-driven metalworking tools, and flexible-shaft machines; presses (forming, stamping, and punch); riveting machines (not portable); rod and wire forming and fabricating machines; rolling mill machinery and equipment; shears; spring winding and forming machines; acetylene welding and cutting apparatus; wire-drawing machines; and replacement and repair parts); and (4) manufacturing attachments and accessories for machine tools and other metalworking machinery. *This industry subgroup does not include manufacturing hand tools (except power-driven) or manufacturing electric welding apparatus.*

The adjusted rate of return for this industry subgroup is 16.8 percent.

Ship and boat building and repairing—Standard Industrial Classification groups 3731 and 3732.—Building and repairing all types of ships, barges, canal boats, lighters, motorboats, sailboats, rowboats, lifeboats, and canoes. *This industry subgroup does not include fabricating structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installations, etc.*

The adjusted rate of return for this industry subgroup is 10.4 percent.

Wines—Standard Industrial Classification group 2084.—Manufacturing both dry and sweet wines. *This industry subgroup does not include bottling purchased wines.*

The adjusted rate of return for this industry subgroup is 7.8 percent.

Photographic studios, including commercial photography—Standard Industrial Classification groups 7231 and 7232.—Portrait photography for the general public; and photography for advertising agencies, publishers, and other industrial users. *This industry subgroup does not include film developing or print processing for the trade or for the general public, or motion picture film processing.*

The adjusted rate of return for this industry subgroup is 8.6 percent.

Telegraph communication (wire and radio)—Standard Industrial Classification group 4821.—Furnishing telegraphic communication service by transmitting nonvocal record communications intended for receipt by designated persons.

The adjusted rate of return for this industry subgroup is 1.5 percent.

Transportation by air—Standard Industrial Classification groups 4512, 4513, 4521, 4582, and 4583.—Carriers; operation and maintenance of airports and flying fields; and furnishing coordinated handling services for air freight or passengers at airports.

The adjusted rate of return for this industry subgroup is 3.0 percent.

1. Total assets at end of each taxable year ending after the beginning of the base period and before July 1, 1950.—For definition of "total assets," see general instruction 7, Schedule EP–5.

2. Interest paid or accrued for each taxable year for which an entry is made on line 1.—The amount to be entered on line 2 for each taxable year is the total amount of interest paid or incurred by the taxpayer for such year. Such amount should include interest on all indebtedness, irrespective of whether such indebtedness constitutes borrowed capital within the meaning of section 439 (b).

3. Average of total assets.—Enter the aggregate of the amounts of line 1, divided by the number of such amounts.

4. Taxpayer's industry subgroup and adjusted rate of return.—Enter on this line the industry subgroup, to which is attributable more than 50 percent of the aggregate of the taxpayer's gross receipts for the taxable years beginning with or within the taxpayer's base period. For definition of "gross receipts," see instruction 40, Schedule EP–2. Also enter on line 4 the adjusted rate of return for the industry subgroup of which the taxpayer is a member.

6. Interest adjustment.—The amount to be entered on line 6 is the average yearly amount of interest paid or incurred by the taxpayer for all taxable years for which its total assets were determined on line 1. The average yearly amount of interest is computed by aggregating the amounts entered on line 2, dividing such aggregate by the total number of months in the taxable years involved, and multiplying the quotient by 12.

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APPENDIX A

Final rates of return

Standard Industrial Classification number	Industry classifications	Final base period yearly rate of return (percent)				Final base period rate of return (percent)
		1946	1947	1948	1949	
	AGRICULTURE, FORESTRY, AND FISHERIES					
01 and 07	Farms and agricultural services, hunting, trapping	12.5	12.8	12.7	9.9	11.9
08	Forestry	6.1	8.2	9.2	6.2	7.4
09	Fisheries	9.1	2.1	4.5	2.2	4.2
	MINING					
10	Metal mining	5.2	11.8	13.8	7.7	9.9
11	Anthracite mining	6.4	5.8	8.0	4.0	6.1
12	Bituminous coal and lignite mining	6.3	14.6	15.4	5.8	10.9
13	Crude petroleum and natural gas extraction	5.1	9.7	11.8	8.8	9.3
14	Nonmetallic minerals except fuels	11.9	14.2	15.0	13.2	13.7
	CONTRACT CONSTRUCTION					
15 and 16	General contractors	8.6	10.5	13.7	12.3	11.6
17	Special trade contractors	12.6	15.2	15.1	9.9	13.1
	MANUFACTURING					
20	Food and kindred products	18.4	15.2	12.4	11.7	14.2
21	Tobacco manufactures	9.7	9.8	11.1	11.7	10.6
22	Textile mill products	24.0	23.2	20.6	9.5	19.0
23	Apparel and other finished products made from fabrics	21.8	16.7	10.4	6.2	13.3
24	Lumber and wood products	16.0	23.0	19.6	10.2	17.1
25	Furniture and fixtures	16.4	16.4	14.6	10.5	14.5
26	Paper and allied products	17.8	23.2	18.1	12.7	17.8
27	Printing, publishing, and allied industries	18.6	15.7	13.8	11.8	14.8
28	Chemicals and allied products	17.3	17.6	16.2	15.0	16.5
29	Products of petroleum and coal	6.1	8.7	11.3	6.4	8.2
30	Rubber products	18.6	12.4	13.4	8.7	13.1
31	Leather and leather products	19.3	15.9	10.2	7.3	13.0
32	Stone, clay, and glass products	15.4	16.3	17.2	16.0	16.3
33 and 34	Primary metal industries and fabricated metal products (except ordnance, machinery, and transportation equipment)	9.8	15.4	16.4	12.1	13.6
19	Ordnance and accessories	4.5	11.6	14.8	6.7	9.4
35	Machinery (except electrical)	9.4	16.0	17.2	13.4	14.3
36	Electrical machinery, equipment, and supplies	4.2	14.5	15.6	12.4	12.0
37	Transportation equipment	1.4	13.5	18.6	20.9	14.4
38 and 39	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks; including miscellaneous manufacturing industries	11.9	13.8	13.5	10.4	12.4
	TRANSPORTATION, COMMUNICATION, AND OTHER PUBLIC UTILITIES					
40	Railroads	2.1	3.9	5.3	3.7	3.8
41	Local and interurban railways and bus lines	4.1	*	2.2	1.9	1.5
42	Trucking and warehousing	11.4	12.2	14.0	11.7	12.4
43	Highway transportation not elsewhere classified	24.1	15.1	12.1	9.2	14.9
44	Water transportation	9.1	9.9	8.1	7.8	8.7
45	Transportation by air	*	*	1.3	3.9	*
46	Pipeline transportation	11.1	10.5	10.5	8.9	10.0
47	Services incidental to transportation	8.1	10.0	7.1	6.5	7.9
48	Telecommunications	6.1	4.1	4.9	5.0	5.0
49	Utilities and sanitary services	7.0	6.3	6.1	6.2	6.4
	WHOLESALE TRADE					
50 and 51	Wholesale trade	16.5	15.3	12.6	8.2	12.8
	RETAIL TRADE					
52	Building materials and farm equipment	15.3	16.3	15.3	9.2	13.8
53	General merchandise	20.9	17.4	16.7	12.4	16.6
54	Food	15.8	13.9	12.9	13.6	14.0
55	Automotive dealers and gasoline service stations	27.5	33.0	27.3	15.8	24.9
56	Apparel and accessories	19.4	14.4	11.6	6.5	12.6
57	Furniture, home furnishings, and equipment	16.9	12.4	9.1	5.6	10.3
58	Eating and drinking places	12.6	6.6	5.7	4.9	7.2
59	Miscellaneous retail stores	14.3	10.7	9.1	6.2	9.7
	FINANCE, INSURANCE, AND REAL ESTATE					
60	Banking	0.9	0.7	0.8	0.9	0.8
61	Credit agencies other than banks	3.3	3.7	4.8	5.2	4.4
62	Security and commodity brokers, dealers, exchanges, and services	2.8	1.5	1.5	2.3	2.1
63	Insurance carriers	2.4	2.4	2.8	3.2	2.7
64	Insurance agents, brokers, and service	8.3	9.5	10.0	7.7	8.9
65	Real estate	5.1	5.2	5.3	5.1	5.2
67	Holding and other investment companies	5.9	5.6	6.0	5.7	5.8
	SERVICES					
70	Hotels, rooming houses, camps, and other lodging places	9.6	8.6	8.1	6.9	8.2
72	Personal services	11.7	11.1	9.1	8.4	9.9
73	Miscellaneous business services	12.8	13.1	13.0	11.2	12.5
75	Automobile repair services and garages	14.8	13.7	12.5	9.2	12.2
76	Miscellaneous repair services	10.4	13.4	13.3	9.0	11.5
77	Radio broadcasting, including facsimile broadcasting, and television	24.9	18.8	12.5	9.2	15.4
78	Motion pictures	19.4	14.6	9.2	8.4	12.9
79	Amusement and recreation services except motion pictures	21.3	13.6	11.9	8.5	13.4
80, 81, 82, 84, 86, and 89	Other services	8.8	9.7	10.3	8.6	9.4

*Negative rate of return.

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