

§ 1.1481-1

the first installment is to be paid on or before the date prescribed for the payment of the excess profit as a single payment, the second installment on or before the 15th day of the third month, the third installment on or before the 15th day of the sixth month, and the fourth installment on or before the 15th day of the ninth month, after such date.

§17.18 *Liability of surety.* The surety under contracts entered into after the amendment of section 3(b) of the act of June 25, 1936 shall not be liable for payment of excess profit due the United States in respect of such contracts.

§17.19 *Determination of liability for excess profit, interest and penalties; assessment, collection, payment, refunds.* (a) The duty of determining the correct amount of excess profit liability on contracts and subcontracts coming within the scope of the act is upon the Commissioner of Internal Revenue. Under section 3(b) of the act, as amended, and section 651 of the Internal Revenue Code, all provisions of law (including the provisions of law relating to interest, penalties and refunds) applicable with respect to the taxes imposed by Title I of the Revenue Act of 1934 and not inconsistent with section 3 of the act are applicable with respect to the assessment, collection, or payment of excess profits on contracts and subcontracts coming within the scope of the act and to refunds of overpayments of profits into the Treasury under the act. Claims by a contracting party for the refund of an amount of excess profit, interest, penalties, and additions to such excess profit shall conform to the general requirements prescribed with respect to claims for refund of overpayments of taxes imposed by Title I of the Revenue Act of 1934 and, if filed on account of any additional costs incurred pursuant to guarantee provisions in a contract, shall be supplemented by a statement under oath showing the amount and nature of such costs and all facts pertinent thereto.

(b) Administrative procedure for the determination, assessment and collection of excess profit liability under section 3 of the act, sections 650 and 651 of the Internal Revenue Code, and this part, and the examination of reports and claims in connection therewith will be prescribed from time to time by the Commissioner of Internal Revenue.

26 CFR Ch. I (4-1-04 Edition)

MITIGATION OF EFFECT OF RE-NEGOTIATION OF GOVERNMENT CONTRACTS

§ 1.1481-1 [Reserved]

TAX ON TRANSFERS TO AVOID INCOME TAX

§ 1.1491-1 Imposition of tax.

Section 1491 imposes an excise tax upon transfers of stock or securities by a citizen or resident of the United States, or by a domestic corporation or partnership, or by a trust which is not a foreign trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign trust, or to a foreign partnership. The tax is in an amount equal to 27½ percent of the excess of (a) the value of the stock or securities so transferred over (b) its adjusted basis, as provided in section 1011, for determining gain in the hands of the transferor.

[T.D. 6500, 25 FR 12082, Nov. 26, 1960]

§ 1.1492-1 Nontaxable transfers.

(a) The tax imposed by section 1491 does not apply:

(1) If the transferee is an organization (other than an organization described in section 401(a) exempt from income tax under the provisions of sections 501 to 504, inclusive); or

(2) If before the transfer it has been established to the satisfaction of the Commissioner that the transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

(b) Whether a transfer of stock or securities is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes is a question to be determined from the facts and circumstances of each particular case. In any such case where a transferor desires to establish that the transfer is not in pursuance of such a plan, a statement of the facts relating to the plan under which the transfer is to be made or was made, together with