

DEPARTMENT OF JUSTICE,
Washington, November 1, 1920.

DEAR MR. SECRETARY: I have the honor to acknowledge receipt of your letter of July 19, 1920, in which you request an opinion upon the following questions of law:

1. Whether the floor tax imposed by section 303, act of October 3, 1917 (40 Stat., 300), and the floor tax imposed by section 604, act of February 24, 1919 (40 Stat., 1057), apply to distilled spirits held on board American ships for sale beyond the 3-mile limit, some of the ships, at the incidence of the tax, being at dock in this country, some on the high seas, and others in foreign waters. In each instance the spirits were produced in or imported into the United States prior to the effective dates of the acts in question.

2. Whether the national prohibition act (act of October 28, 1919, 41 Stat., 305), applies to intoxicating liquors as defined in section 1, Title II of said act, on board American ships, when such ships are (1) at dock in this country; (2) on the high seas; (3) in foreign waters.

You are advised as follows: Section 303 of the act of October 3, 1917, reads—

That upon all distilled spirits produced in or imported into the United States upon which the tax now imposed by law has been paid, and which, on the day this Act is passed, are held by a retailer in a quantity in excess of fifty gallons in the aggregate, or held by any person, corporation, partnership, or association in any quantity, and which are intended for sale, there shall be levied, assessed, collected, and paid a tax of \$1.10 (or, if intended for sale for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage, a tax of \$2.10) on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon: *Provided*, That the tax on such distilled spirits in the custody of a court of bankruptcy in insolvency proceedings on June first, nineteen hundred and seventeen, shall be paid by the person to whom the court delivers such distilled spirits at the time of such delivery, to the extent that the amount thus delivered exceeds the fifty gallons hereinbefore provided.

Section 604 of the act of February 24, 1919, provides:

That upon all distilled spirits produced in or imported into the United States upon which the internal-revenue tax now imposed by law has been paid, and which, on the day after the passage of this Act, are held by any person and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor tax of \$3.20 (if intended for sale for beverage purposes or for use in the manufacture or production of any article used or intended for use as a beverage) on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon.

(1) I assume that question 1 relates alone to stocks of spirits belonging to ships and intended for sale on such shipboard, and not to spirits being transported to foreign ports as freight. It is stated that these liquors, previous to the passage of the two acts respectively quoted, had been produced in or imported into the United States, and the question is whether being on board American ships they were so held at the time of the passage of the respective acts as to be subject to the tax imposed. The descriptive language of both acts is "held by any person * * * and intended for sale," etc. It is not doubted, I believe, that an American vessel is itself subject to the taxing power of the Government at its home port, whether it be there, upon the high seas, or in foreign waters at the time the tax is levied. The tax levied by the statutes above referred to of course apply only to such spirits as were held at the time the acts were passed at a place which made them subject to the taxing power of the Government. Since they were on board a ship which was itself subject to this taxing power, I can not doubt that they became subject to the tax imposed by these statutes, whether the vessel on which they were held was at dock in this country, on the high seas, or in foreign waters.

(2) The eighteenth amendment, by its terms, applies to the United States and to "all territory subject to the jurisdiction thereof." The national prohibition act does

not contain any language limiting the territory within which it is to be in effect. It simply enacts that certain transactions with respect to intoxicating liquors shall be unlawful and provides "that any person" who violates its provisions shall be punished. It is clear, therefore, that this legislation prescribes rules of law which shall be in force wherever the laws of Congress are applicable. By virtue of the eighteenth amendment, Congress is empowered to legislate on this subject without regard to State or other lines and with respect to all territory subject to the jurisdiction of the United States. Except, therefore, as its operation in particular possessions of the United States may be limited by special statutes applicable to those possessions, the national prohibition act is in force throughout the jurisdiction of the United States. The question then is whether it furnishes rules of law which govern those on board an American vessel. That it does so apply when the vessel is in American waters I think no one will doubt. The question then is whether it applies when the vessel is on the high seas or in foreign waters. This question also I think can now present no serious dispute. It was said in *St. Clair v. United States* (154 U. S., 134, 151):

A vessel registered as a vessel of the United States is, in many respects, considered as a portion of its territory, and "persons on board are protected and governed by the laws of the country to which the vessel belongs."—

It follows, therefore, that persons on board an American vessel, wherever that vessel may be, are governed by the laws of the United States, to which they would be subject if within the United States. **Indeed, the jurisdiction of the Federal Government over them is much broader than when they are within the United States. In the latter case, with respect to the great bulk of criminal laws, they are subject to the jurisdiction of the various States and not to that of the United States.** The various States, however, have no jurisdiction even of their own citizens when on the high seas. For this reason, Congress may enact, and the Federal Government may enforce, criminal laws for the purpose of punishing offenders for offenses committed while on the high seas which it would not be within the power of Congress to make applicable to the same offense if committed within one of the States. Thus, Chapter III of the Revised Statutes, beginning with section 5339, contains a long list of offenses which if committed within one of the States would be beyond the power of the Federal Government to punish, and provides that when committed upon the high seas they shall be punished by the Federal Government. In such cases, it was of course necessary to have a special statute, for the reason that Congress has no power to enact laws for the punishment of murder and the other offenses mentioned in Chapter III of the Revised Statutes to be applicable generally throughout the United States. Any law, however, enacted by Congress, within its power, and made of general application is a law to which persons within the criminal jurisdiction of the United States are subject. The criminal jurisdiction of the United States is necessarily limited to their own territory, actual or constructive. After making this statement Mr. Justice Field, in *United States v. Smiley* (6 Sawyer, 640, 645), stated the rule of law determining the territory subject to the criminal jurisdiction of the United States as follows:

Their actual territory is coextensive with their possessions, including a marine league from their shores into the sea. * * * The constructive territory of the United States embraces vessels sailing under their flag; wherever they go they carry the laws of their country, and for a violation of them their officers and men may be subjected to punishment.—

It was for this reason that the Supreme Court said in *St. Clair v. United States*, supra, that persons on board a vessel are protected and governed by the laws of the country to which the vessel belongs.

The eighteenth amendment empowers Congress to enact laws applicable wherever the jurisdiction of the United States exists. The national prohibition act is a law of

such general application. I can not doubt, therefore, that it applies to those on board American ships whether in American waters, on the high seas, or in foreign waters equally with those in any of the States of the United States.

Respectfully,

WM. L. FRIERSON, *Acting Attorney General.*

HON. DAVID F. HOUSTON,
Secretary of the Treasury, Washington, D. C.

(T. D. 3099.)

Inventories by cigar and tobacco manufacturers and dealers in leaf tobacco on January 1, 1921.

Instructions relative to inventories by manufacturers of cigars and tobacco and dealers in leaf tobacco on January 1 next and verification of such inventories by collectors or their deputies.

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

To collectors of internal revenue:

Manufacturers of tobacco, snuff, cigars, and cigarettes, and dealers in leaf tobacco are required to make inventories on January 1 next in accordance with the following provisions of law:

Every person now or hereafter engaged in the manufacture of tobacco or snuff shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner of Internal Revenue, and verified by his own oath, of the quantity of each of the different kinds of tobacco, snuff flour, snuff stems, scraps, clippings, waste, tin foil, licorice, sugar, gum, and other materials held or owned by him on the first day of January of each year, * * * setting forth what portions of said goods and materials, and what kinds were manufactured and produced by him, and what was purchased from others. * * *

And whenever any such person refuses or willfully neglects to deliver the inventory * * * he shall be fined not less than five hundred dollars nor more than five thousand dollars and imprisoned not less than six months nor more than three years. (Sec. 3358, Revised Statutes.)

Every person now or hereafter engaged in the manufacture of cigars (or cigarettes) shall make and deliver to the collector of the district a true inventory, in such form as may be prescribed by the Commissioner of Internal Revenue, of the quantity of leaf tobacco, cigars, stems, scraps, clippings, and waste, and of the number of cigar boxes and the capacity of each box, held or owned by him on the 1st day of January of each year * * * setting forth what portion and kinds of said goods were manufactured or produced by him and what were purchased from others, and shall verify said inventory by his oath indorsed thereon. * * * In case of refusal or willful neglect to deliver the inventory * * * he shall be fined not less than \$500 nor more than \$5,000 and imprisoned not less than six months nor more than three years. (Sec. 3390, Revised Statutes.)

Every dealer in leaf tobacco shall make and deliver to the collector of the district a true inventory of the quantity of the different kinds of tobacco held or owned, and where stored by him, on the first day of January of each year, * * * such inventory to be made under oath and rendered in such form as may be prescribed by the commissioner. * * *

Every dealer in leaf tobacco who neglects or refuses * * * to file inventory * * * shall be fined not less than \$100 or more than \$500, or imprisoned not more