

ferred to Italy those Italian vessels acquired by the United States after December 7, 1941, for use in the war effort and now owned by the United States and vessels of a total tonnage approximately equal to the tonnage of those Italian vessels seized by the United States after September 1, 1939, and lost while being employed in the United States war effort.”

RETURN OF ITALIAN PROPERTY

Act Aug. 5, 1947, ch. 499, §1, 61 Stat. 784, provided: “That the President, or such officer or agency as he may designate, is hereby authorized to return, in accordance with the procedures provided for in section 32 of the Trading With the Enemy Act, as amended [this section], any property or interest, or the net proceeds thereof, which has been, since December 18, 1941, vested in or transferred to any officer or agency of the United States pursuant to the Trading With the Enemy Act, as amended [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix], and which immediately prior to such vesting or transfer was the property or interest of Italy or a citizen or subject of Italy, or a corporation or association organized under the laws of Italy.”

TRANSFER OF VESSELS TO ITALIAN GOVERNMENT

Act Aug. 5, 1947, ch. 499, §4, 61 Stat. 786, provided: “The President is authorized upon such terms as he deems necessary (a) to transfer to the Government of Italy all vessels which were under Italian registry and flag on September 1, 1939, and were thereafter acquired by the United States and are now owned by the United States; and (b) with respect to any vessel under Italian registry and flag on September 1, 1939, and subsequently seized in United States ports and thereafter lost while being employed in the United States war effort, to transfer to the Government of Italy surplus merchant vessels of the United States of a total tonnage approximately equal to the total tonnage of the Italian vessels lost: *Provided*, That no monetary compensation shall be paid either for the use by the United States or its agencies of former Italian vessels so acquired or seized or for the return or transfer of such vessels or substitute vessels.”

EXECUTIVE ORDER NO. 10587

Ex. Ord. No. 10587, Jan. 13, 1955, 20 F.R. 361, as amended by Ex. Ord. No. 11086, Feb. 26, 1963, 28 F.R. 1833, which designated the Jewish Restitution Successor Organization as successor in interest to deceased persons under subsec. (h) of this section and delegated to the Foreign Claims Settlement Commission the functions provided for in subsec. (h) of this section, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 33. Notice of claim; institution of suits; computation of time

No return may be made pursuant to section 9 or 32 [section 9 or 32 of this Appendix] unless notice of claim has been filed: (a) in the case of any property or interest acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of any property or interest acquired by the United States on or after December 18, 1941, not later than one year from February 9, 1954, or two years from the vesting of the property or interest in respect of which the claim is made, whichever is later. No suit pursuant to section 9 [section 9 of this Appendix] may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for re-

turn pursuant to section 9 or 32(a) hereof [section 9 or 32(a) of this Appendix].

(Oct. 6, 1917, ch. 106, §33, as added Dec. 18, 1941, ch. 593, title III, §305, as added Aug. 8, 1946, ch. 878, §1, 60 Stat. 925; amended Aug. 5, 1947, ch. 499, §3, 61 Stat. 786; July 1, 1948, ch. 794, 62 Stat. 1218; Feb. 9, 1954, ch. 4, 68 Stat. 7; Aug. 23, 1954, ch. 830, §2, 68 Stat. 768; Pub. L. 87-846, title II, §204(b), Oct. 22, 1962, 76 Stat. 1115.)

CODIFICATION

Section was formerly classified to section 620 of this Appendix.

AMENDMENTS

1962—Pub. L. 87-846 struck out provision for return of property to successor organizations pursuant to section 32(h) of this Appendix if notice of claim was filed before expiration of one year from Aug. 23, 1954.

1954—Act Aug. 23, 1954, inserted before period at end of first sentence “except that return may be made to successor organizations designated pursuant to section 32(h) hereof if notice of claim is filed before the expiration of one year from the effective date of this Act”.

Act Feb. 9, 1954, substituted “not later than one year from February 9, 1954” for “by April 30, 1949” in first sentence.

1948—Act July 1, 1948, amended section generally, extending time for filing claims under section 9 or 32 of this Appendix.

1947—Act Aug. 5, 1947, provided that notice of certain claims could be filed by Aug. 8, 1948, or that Italian notice of claim could be filed by July 31, 1949.

TRANSFER OF FUNCTIONS

Functions of Alien Property Custodian and Office of Alien Property Custodian, except those relating to property or interest in Philippines, vested in Attorney General. See notes set out under section 6 of this Appendix.

§ 34. Payment of debts

(a) Claims allowable; defenses

Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix] and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the beginning of the war been convicted of violation of this Act, as amended [said sections], sections 1 to 6 of the Criminal Code, title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934¹ (ch. 327, 52 Stat. 631), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration

¹ So in original. Probably should be “1938”.

Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act; and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law or debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) Time limit for filing claims; extension; notice

The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of two years from the date of the last vesting in or transfer to the Custodian of any property or interest of a debtor in respect of whose debts the date is fixed, or from the date of enactment of this section [Aug. 8, 1946], whichever is later. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or interest or proceeds in respect of which a suit or proceeding pursuant to this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix] for return is pending and was instituted prior to the expiration of such one hundred and twenty days.

(c) Examination of claims

The Custodian shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part.

(d) Funds for debt payments

Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection

with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section 36 hereof [section 36 of this Appendix], paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation of any such property or interest or otherwise. The Custodian shall not be required through any judgment of any court, levy of execution, or otherwise to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.

(e) Amount payable; disallowance; notice; review; additional evidence; judgment

If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) of this section, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the United States District Court for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and the determination of the Custodian with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodian's determination, and directing payment in the amount, if any, which it finds due.

(f) Pro rata payments; notice; review; additional evidence; intervention; judgment

If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the pro-

posed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the United States District Court for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Priority of claims

Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed \$600; (2) claims entitled to priority under sections 191 and 193 of title 31² of the United States Code [31 U.S.C. 3713(a) and 9309], except as provided in subsection (h) hereof, (3) all other claims for services rendered, for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) hereof, payment may be made permits payment in full of all allowed claims in every prior class.

(h) Priority as debt due United States

No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as

a result of its acquisition by the Alien Property Custodian.

(i) Exclusiveness of relief

The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: *Provided*, That no person asserting any interest, right, or title in any property or interest or proceeds acquired by the Alien Property Custodian, shall be barred from proceeding pursuant to this Act [sections 1 to 6, and 7 to 39, and 41 to 44 of this Appendix] for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or interest or proceeds be deemed to have been waived solely by reason of such proceeding. The Alien Property Custodian shall treat all debt claims now filed with him as claims filed pursuant to this section. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property or interest from the Alien Property Custodian shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property or interest prior to its vesting in or transfer to the Alien Property Custodian. Payment by the Alien Property Custodian to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

(Oct. 6, 1917, ch. 106, § 34, as added Dec. 18, 1941, ch. 593, title III, § 305, as added Aug. 8, 1946, ch. 878, § 1, 60 Stat. 925; amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

REFERENCES IN TEXT

Sections 1 to 6 of the Criminal Code, referred to in subsec. (a), are sections 1 to 6 of act Mar. 4, 1909, ch. 321, 35 Stat. 1088, which enacted sections 1 to 6 of former Title 18, Criminal Code and Criminal Procedure. Sections 1 to 6 of former Title 18 were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and reenacted as sections 953 and 2381 to 2384 of Title 18, Crimes and Criminal Procedure.

Title I of act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended, referred to in subsec. (a), is act June 15, 1917, ch. 30, title I, 40 Stat. 217, as amended, which enacted sections 31 to 38 of Title 50, War and National Defense, and which was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and reenacted as sections 792 to 794 and 2388 of Title 18, Crimes and Criminal Procedure.

Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended, referred to in subsec. (a), is act Apr. 20, 1918, ch. 59, 40 Stat. 534, as amended, which enacted sections 101 to 106 of Title 50, and which was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and reenacted as sections 2151 and 2153 to 2156 of Title 18.

² See References in Text note below.

Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended, referred to in subsec. (a), probably means act June 8, 1938, ch. 327, 52 Stat. 631, as amended, known as the Foreign Agents Registration Act of 1938, which is classified generally to subchapter II (§611 et seq.) of chapter 11 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 22 and Tables.

Act January 12, 1938 (ch. 2, 52 Stat. 3), referred to in subsec. (a), is act Jan. 12, 1938, ch. 2, 52 Stat. 3, which enacted sections 45 to 45d of Title 50, War and National Defense, and which was repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862, and reenacted as sections 791 and 795 to 797 of Title 18, Crimes and Criminal Procedure.

Title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670), referred to in subsec. (a), is act June 28, 1940, ch. 439, title I, 54 Stat. 670, which enacted sections 9 to 13 of former Title 18, Criminal Code and Criminal Procedure, and which was repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862, and reenacted as sections 2385 and 2387 of Title 18, Crimes and Criminal Procedure.

Act October 17, 1940 (ch. 897, 54 Stat. 1201), referred to in subsec. (a), is act Oct. 17, 1940, ch. 897, 54 Stat. 1201, which enacted sections 14 to 17 of former Title 18, Criminal Code and Criminal Procedure, and which was repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862, and reenacted as section 2386 of Title 18, Crimes and Criminal Procedure.

Act of June 25, 1942 (ch. 447, 56 Stat. 390), referred to in subsec. (a), is act June 25, 1942, ch. 447, 56 Stat. 390, as amended, which was classified to sections 781 to 785 of this Appendix and was omitted from the Code as terminated.

The Alien Enemy Act, referred to in subsec. (a), probably means sections 4067 to 4070 of the Revised Statutes, which are classified to sections 21 to 24 of Title 50, War and National Defense.

Sections 191 and 193 of title 31 of the United States Code, referred to in subsec. (g), were repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof as sections 3713(a) and 9309 of Title 31, Money and Finance.

CODIFICATION

Section was formerly classified to section 620 of this Appendix.

CHANGE OF NAME

In subsecs. (e) and (f), "United States District Court for the District of Columbia" substituted for "the district court of the United States for the District of Columbia" on authority of act June 25, 1948, as amended by act May 24, 1949.

TRANSFER OF FUNCTIONS

Functions of Alien Property Custodian and Office of Alien Property Custodian, except those relating to property or interest in Philippines, vested in Attorney General. See notes set out under section 6 of this Appendix.

§ 35. Hearings on claims; rules and regulations; delegation of powers

The officer or agency empowered to entertain claims under sections 9(a), 32, and 34 hereof [sections 9(a), 32, and 34 of this Appendix] shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpoenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by sections 9(a), 32, and 34

hereof [said sections] may be exercised through subordinate officers designated by such officer or agency.

(Oct. 6, 1917, ch. 106, §35, as added Dec. 18, 1941, ch. 593, title III, §305, as added Aug. 8, 1946, ch. 878, §1, 60 Stat. 928.)

CODIFICATION

Section was formerly classified to section 620 of this Appendix.

§ 36. Taxes

(a) Liability; exemptions

The vesting in or transfer to the Alien Property Custodian of any property or interest (other than any property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in title II of the Social Security Act [42 U.S.C. 401 et seq.] with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.

(b) Payment by Custodian; liability of former owner; enforcement of tax liability; transfer of property

The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix], pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this Act [said sections] without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to which they are incident or out of other property or interests acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or interest is transferred, otherwise than pursuant to section 9(a) or 32 hereof [section 9(a) or 32(a) of this Appendix], the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.