tax year the amounts actually earned and the actual costs of earning them.

The *American Automobile Association* case was such a decision. That decision did not reject the use of the accrual principle, as such, for the reporting of advance receipts as income in the year in which they were earned. It did reject the application of the principle by the taxpayer in that case because of defects in bringing together specific receipts and the costs of earning them, which defects are not in any way present in the case now before the Court. Those who argue for a more sweeping interpretation of the *American Automobile Association* case would put it in direct conflict with decisions of the Court that recognize as proper for tax purposes the reporting of income as it is "earned" by an accrual basis taxpayer and with relevant sections of the Internal Revenue Code and regulations thereunder governing tax accounting. And such an interpretation would perpetuate an unwarranted distinction between established principles of commercial accounting and accounting for tax purposes, and seriously distort the reporting of income by many accrual basis taxpayers whose accounting procedures for advance receipts are accurate and precise.

A. AMERICAN AUTOMOBILE DOES NOT BAR PRECISE AND ACCURATE ACCRUAL ACCOUNTING OF ADVANCE RECEIPTS FOR TAX PURPOSES

1. *American Automobile* required the Court to rule only whether the Commissioner of Internal Revenue was empowered to disregard the method of accrual accounting for advance receipts used by a taxpayer, a national membership automobile club, which method did not precisely match the portion of the cost of performing services for its individual members in the tax

year with the proper portion of dues revenues prepaid by each member for a twelve-month membership period. Because the number of individual members was large, the taxpayer sought to rely upon its over-all experience in performing services for all of its members in order to determine the cost of service performed for any one member. Its accrual accounting procedures required only that dues be reported as income for tax purposes on a month-by-month basis ratably over the membership period, without regard to the actual cost of services rendered to each member but keyed at best to a statistically calculated cost deemed sufficiently representative of actual cost. 367 U.S. at pp. 688, 690. For this reason the Court considered the *American Automobile* case controlled in essential respects by *Automobile Club of Michigan* v. *Commissioner*, 353 U.S. 180, 189, which upheld the Commissioner's rejection for income tax purposes of substantially the same accrual accounting system because recording the accrual of the membership dues paid to the taxpayer "in monthly amounts is purely artificial and bears no relation to the services which petitioner may in fact be called upon to render for the members."

From a tax accounting point of view, therefore, both the *Michigan* and *American Automobile* cases turn on the fact that in recording the accrual of income for tax purposes in any year neither taxpayer could validly demonstrate that there had been precise matching of the portions of the membership dues with the related expenses of rendering services to individual members. This was deemed crucial by the Court in *American Automobile*. Thus, the Court characterized the accrual accounting system there used as one which caused earned income to be reported over the membership period "without regard to correspondingly fixed individual expense or performance justification" and which was not related to "the actual incidence of cost in serving an individual member" (but was rather on a "group or pool basis") or "in fact related to the expenses incurred." 367 U.S. at pp. 692-693.[6]

The extensive consideration of the adequacy of the taxpayer's accounting practices strongly indicates that the Court's holding in *American Automobile* was only that it was not unsound for the Commissioner to reject that particular method of accrual accounting for advance receipts. From an accounting point of view the Institute earnestly urges that in the present case the Court make clear that its decision in *American Automobile* was confined solely to that issue.

2. The actual holding of the majority of the Court was stated clearly and succinctly by Mr. Justice Clark (367 U.S. at p. 693):

> "... [T]he federal revenue cannot, without legislative consent and over objection of the Commissioner, be made to depend upon average experience in rendering performance and turning a profit."

Respondent, however, seeks to support a far broader reading of *American Automobile* and points to the discussion that appears in the opinion of the action of

[6] In Milwaukee & Suburban Transport Co. v. Commissioner, 292 F.2d 629 (7th Cir. 1961), *cert. denied*, 368 U.S. 976, there was a comparable reliance by the taxpayer upon over-all averages in recording the accrual of deductions for future expenses representing claims lodged against it. This was one basis upon which the Commissioner contended that the *American Automobile* decision sustained his rejection of the taxpayer's method of accrual accounting. See pp. 4-5 of the Memorandum for the Respondent in Opposition to the Petition for Certiorari of the taxpayer in the Milwaukee case, No. 603, October Term, 1961.

Congress in enacting in 1954, and repealing a year later, Sections 452 and 462 of the Internal Revenue Code of 1954. This portion of the Court's opinion, respondent has asserted, recognizes in the Commissioner the discretionary power to bar the use for tax purposes of any method of accrual accounting for advance receipts no matter how accurate and precise, if it may involve reporting such receipts as income in a subsequent tax year.[7]

But Justice Clark made explicit, as we have noted above, that the majority's concern was with a method of accrual accounting that is dependent, in relating costs and revenues, upon "average experience" with expenses incurred by the taxpayer in rendering performance. Accordingly, the consideration in *American Automobile* of the legislative history of the two 1954 Code provisions, which dealt specifically with advance receipts and reserves for future expenses, had relevance only to the particular type of accrual accounting method that was there at issue, in which over-all estimates and averages of expenses were relied upon in determining reportable income.

This is evident from the *American Automobile* opinion itself. It referred to the effect of the legislative history of Sections 452 and 462 upon "the [accounting] practice as was used by the [Automobile] Association here" and upon "the method used by the Association." 367 U.S. at pp. 694-95. Elsewhere it discussed the action of Congress in enacting these sections as "specifically permitt[ing] essentially the same prac-

[7] See Brief for the Respondent in Opposition to Petition for Certiorari, pp. 9-10, Schlude v. Commissioner, No. 793, Supreme Court, October Term, 1961. See also Memorandum for the Respondent in Opposition to Petition for Certiorari, p. 5, Milwaukee & Suburban Transport Corp. v. Commissioner, No. 603, Supreme Court, October Term, 1961.

tice as was employed by the Association here"; the sections were described as the only ones "incontestably permitting," or that "specifically declared" to be acceptable, the method of accrual accounting used by the Association. *Ibid.* Finally, the opinion pointed to repeated unsuccessful attempts by the taxpayer in *American Automobile* to convince Congress to pass legislation which, in terms, would have authorized such membership clubs to use the very same type of accrual accounting system that was under review by the Court. *Id.* at p. 696.

Moreover, to read into this portion of the *American Automobile* opinion any broad rejection of accrual accounting for advance receipts, as respondent appears to urge, would disregard legislative and administrative developments that have occurred subsequent to the decision in that case:

a. On July 26, 1961, shortly after the *American Automobile* decision was handed down, there was enacted a new Section 456 in the 1954 Code (P.L. 87-109, 87th Cong., 1st Sess.) that allowed membership organizations such as the taxpayer in that case to report income as it is earned in performing the service for which their members pay dues. The congressional reports accompanying the enactment of this new section strongly suggest that in repealing Sections 452 and 462 in 1955, Congress did not intend to prohibit the use for tax purposes of all methods of accrual accounting for advance receipts or for reserves for future expenses without regard to how accurately and precisely any such method actually reflected income.

These congressional reports disclose that in taking the action it did in 1955, Congress was not concerned that the use of accrual accounting principles for tax

purposes would permit the reporting of advance receipts as income in tax years subsequent to the year of receipt. Rather, the reports state that in repealing Sections 452 and 462, Congress recognized "the desirability of following generally accepted accounting principles for reporting income for tax purposes," and that the two sections were being repealed only because "Congress became aware of the fact that a large revenue loss was involved" in the "first years of [their] application." H.R. Rep. No. 381, 87th Cong., 1st Sess., p. 2 (1961); S. Rep. No. 543, 87th Cong., 1st Sess., p. 2 (1961). Congress thus appears to have recently acknowledged that the use of proper accrual accounting methods for advance receipts and for reserves for future expenses was permissible for tax purposes before the enactment of Sections 452 and 462 and was not affected by their repeal in 1955.

b. The same conclusion is indicated by the recent issuance by the Commissioner of Internal Revenue of regulations under Section 455, enacted in 1958 to govern taxation of advance receipts for newspaper and periodical subscriptions. These regulations explicitly state that taxpayers who had previously been deferring to a subsequent tax year the recognition of such receipts as income "under an established accounting method" may continue to do so without regard to the specific provisions of Section 455 itself or of the new regulations thereunder.[9]

[9] Regulations § 1.455-5(d) reads:

"Treatment of prepaid subscriptions income under an established accounting method. Notwithstanding the provisions of section 455 and § 1.455-1, any taxpayer who, for taxable years beginning before January 1, 1958, has reported prepaid subscription income for income tax purposes under an established

B. BOTH TAX ACCOUNTING LAW AND THE PRACTICAL CONSEQUENCES CALL FOR REJECTION OF ANY BROAD RULE PROHIBITING EVERY APPLICATION OF THE ACCRUAL ACCOUNTING METHOD THAT DEFERS REPORTING OF ADVANCE RECEIPTS AS INCOME TO A SUBSEQUENT TAX YEAR.

The foregoing analysis of the *American Automobile* decision makes clear that the case constitutes only a determination that rejection of the accrual accounting practices there involved was not an arbitrary decision by the Commissioner. It is also evident from this same analysis that there can be no warrant for joining the two portions of the majority opinion in *American Automobile*, as respondent would urge, to create a rule that prohibits every method of accrual accounting of advance receipts for tax purposes simply because it involves reporting such receipts as income in a subsequent tax year. Not only is any such rule unsupported by *American Automobile* but it is in direct conflict with fundamental principles governing accrual accounting for tax purposes that this Court has developed in an unbroken line of precedent since it decided the landmark case of *United States v. Anderson*, 269 U.S. 422.

1. *The Decisions of this Court.* The *Anderson* case interpreted the tax accounting provisions of the Revenue Act of 1916 (39 Stat. 771), the first tax statute to permit accrual accounting. The Court there required the taxpayer to accrue munitions taxes as a deduction in determining taxable income for a tax year prior to

and consistent method or practice of deferring such income may continue to report such income in accordance with such method or practice for all subsequent taxable years to which section 455 applies without making an election under section 455." T.D. 6591, February 23, 1962 (1962 Int. Rev. Bull. No. 12, at p. 17).

the year in which the taxpayer actually paid such munitions taxes. In ruling that the taxes had accrued in the year that the munitions to which the taxes related were sold (*id.* at p. 436), the Court declared that the purpose of Congress in authorizing the use of accrual accounting methods was (*id.* at p. 440)

> ". . . to enable taxpayers to keep their books and make their returns according to scientific accounting principles, *by charging against income earned during the taxable period, the expenses incurred in and properly attributable to the process of earning income during that period*; and indeed, to require the tax return to be made on that basis, if the taxpayer failed or was unable to make the return on a strict receipts and disbursements basis." (Emphasis added.)

Then, with specific reference to the accrual of the taxes involved in *Anderson*, the Court formulated the "all events" test that since then has served as the over-all standard for determining when an expense is incurred or income is to be reported by an accrual basis taxpayer (*id.* at p. 441):

> ". . . In a technical legal sense it may be argued that a tax does not accrue until it has been assessed and becomes due; but it is also true that in advance of the assessment of a tax, all the events may occur which fix the amount of the tax and determine the liability of the taxpayer to pay it. In this respect, for purposes of accounting and of ascertaining true income for a given accounting period, the munitions tax here in question did not stand on any different footing than other accrued expenses appearing on appellee's books. In the economic and bookkeeping sense with which the [1916]

statute . . . [was] concerned, the taxes had accrued . . ." [10]

The Court several years later applied the principles it had formulated in *Anderson* to other cases involving the time for accrual of the same munitions taxes and similar items of expense. *American National Co.* v. *United States*, 274 U.S. 99; *Niles Bement Pond Co.* v. *United States*, 261 U.S. 351; *Aluminum Castings Co.* v. *Routzahn*, 282 U.S. 92.

[10] Significantly, the ruling and the language of the Court in *Anderson* echoed the position of the United States in that case. The Government's argument, which is quoted below, might well be included here without any change as the position of the Institute (269 U.S. at pp. 424-425):

". . . Under the accrual system of accounting, income is said to be accrued when it is definitely receivable, although its payment may not be due, and liabilities or expenses are said to be accrued when the events have occurred from which liability is determined and the liability has become fixed, even though payment is not yet due. The basic idea under the accrual system of accounting is that the books shall immediately reflect obligations and expense definitely incurred and *income definitely earned* without regard to whether payment has been made or whether payment is due. Under this system, the use of the word 'accrued' does not signify that the item is due. On the contrary, the accrual system wholly disregards due dates. Neither is it necessary that the amount of an incurred liability be accurately ascertainable in order to 'accrue' it. Montgomery, Auditing Theory and Practice, 3rd Ed. Vol. 1, pp. 239, 240; Esquerre, Applied Theory of Accounts, pp. 299-301; Holmes, Federal Income Tax, 1917, pp. 299-301." (Emphasis added.) See Brief for the United States in United States v. Yale & Towne Mfg. Co., pp. 31-32, No. 420, Supreme Court, October Term, 1925 (companion case to *Anderson*).

In light of the Government's then position that accrual accounting methods are designed to reflect "income definitely earned," which the Government equated with "income . . . definitely receivable," it is difficult to understand its position now that advance receipts are "income" when they have not been "earned" or indeed—as in the *Schlude* case—neither earned *nor* received.

Two subsequent decisions, *Continental Tie & Lumber Co.* v. *United States*, 286 U.S. 290, and *Spring City Foundry Co.* v. *Commissioner*, 292 U.S. 182, treated the applicability of accrual accounting methods in determining when income is to be reported. It was recognized that accrual accounting might require the taxpayer to report income *before* he receives any payments as a result of the transaction that gives rise to the tax. In language that has often been quoted, the *Spring City* opinion (*id.* at pp. 184-185) declared that for the accrual basis taxpayer:

". . . it is the right to receive and not the actual receipt that determines the inclusion of the amount in gross income. When the *right* to receive an amount becomes fixed, the right accrues." (Emphasis in original.)

The Court chose this manner to restate a basic concept of accrual accounting: that income is to be reported as it is earned. Thus the opinion proceeded (*id.* at p. 185): "When a merchandising concern makes sales, its inventory is reduced and a claim [by it] for the purchase price arises." Such "sales," however, do not occur merely when a contract of sale is signed, but rather, as the Court made clear, when the taxpayer performs under the contract—or, in the accounting terms used by the Court, when there are "accounts receivable arising from the sales" (*ibid.*). Similarly, the *Continental Tie* case held, in somewhat different language, that the proper time for accruing income is determined when a taxpayer's "right to payment ripened" and when he had a "vested right" to payment—in that case upon the passage of legislation assuring that right and before the receipt of any payments by the taxpayer. 286 U.S. at pp. 294-295.

The foregoing decisions present no conflict with other cases in which the Court has declared that the tax statutes require all taxpayers—accrual as well as cash basis—to report "income" for an annual accounting period. It is entirely consistent with the reporting of *income* in an annual accounting period for an accrual basis taxpayer to postpone recognizing *advance receipts* as *income* until the tax year in which such receipts become income—as they are earned by the taxpayer's conduct of its business. This is the teaching of the cases dealing with the annual accounting requirement, such as *Security Flour Mills* v. *Commissioner,* 321 U.S. 281, *Lewyt Corp.* v. *Commissioner,* 349 U.S. 237, and *Consolidated Edison Co.* v. *United States,* 366 U.S. 380. They do not, we submit, support the erroneous proposition, which has been advanced by the Commissioner, that the annual accounting period concept requires an accrual basis taxpayer to report advance receipts as income no later than the year of actual receipt, regardless of whether earned by performance or not (and correlatively, that deductions must be taken no later than the year in which actually paid even though not yet incurred).[11]

[11] See Brief for the United States, American Automobile Ass'n v. United States, pp. 19-20, No. 288, Supreme Court, October Term, 1960.

The Tax Court apparently embraced this position in the *Schlude* case (R. 258):

> "Nor does the fact that the Studio was required to perform future services under the contract alter the Studio's right to receive since the deferred payments were in many cases due [from students] prior to the rendering of the services. And the record shows that in most instances substantial payments were received prior to the performance of the services for which the payments were made."

In the *Security Mills* case, the Court refused to permit a taxpayer to deduct from gross income in a tax year an item of cost (a flour processing tax) the liability for which the taxpayer denied and payment of which he was contesting in that year. The Court concluded that in these circumstances the tax had not yet been "accrued" as an expense. It therefore required the taxpayer to report as income the amount of the processing tax, which the taxpayer had passed on to its customers, in the year in which it sold the flour subject to the tax. With this background the Court's statement of the annual accounting principle as it applies to accrual basis taxpayers, may be properly understood as only a restatement of the rule set forth in the *Anderson* and *Spring City* cases. For such taxpayers, the Court declared, the annual accounting principle requires income or expense to be allocated to "the year in which the right to receive, or the obligation to pay, has become final and definite in amount." 321 U.S. at pp. 286-287. The *Security Mills case,* therefore, like *Spring City,* is a recognition that the controlling issue in the reporting of income by accrual basis taxpayers is not the year of receipt but the year in which "the right to receive" becomes fixed. And a necessary corollary of any such rule is that the "right" arises—whatever the tax year—only when the taxpayer earns the income, regardless of whether it has received payments from, or is yet to be paid by, its customers.[12]

[12] Brown v. Helvering, 291 U.S. 193, which prohibited an accrual basis taxpayer from deferring the reporting as income commissions received on insurance policies that ran for more than one tax year, is not to the contrary. Although the taxpayer there had contended that the commission was "compensation for services rendered throughout the life of the policy" and that such compensation "cannot be considered as earned until the required services have been performed," the Board of Tax Appeals had found that

See also *Dixie Pine Co.* v. *Commissioner,* 320 U.S. 516, 518-519.

Lewyt Corp v. *Commissioner, supra,* and the more recent *Consolidated Edison* case confirm this analysis. In the former neither the majority nor the dissenting members of the Court, although disagreeing over what tax year another item of expense (again a tax—on excess profits) had "accrued," questioned that the basic issue was: in what tax year had the *obligation to pay* the amount deducted "accrued"? The opinions of the Court contain nothing that even remotely supports the Commissioner's current view that deductions "accrue," and therefore must be taken, no later than the year of payment.

This issue was finally and squarely presented and resolved against the Commissioner in *Consolidated Edison.* The Court unanimously held that an accrual basis taxpayer's deduction, again for a contested tax, is properly taken in the tax year in which a final determination of liability for the tax is made even though the tax had been paid in a prior year. In rejecting the artificial qualification the Commissioner sought to impose upon traditional principles of accrual accounting, the Court made the flat statement that "neither the Government nor an accrual-basis taxpayer may cause an item to be deducted in a year other

there was "no proof that the overriding commissions contain any element of compensation for services to be rendered in future years.'" *Id.* at pp. 203-204; 22 B.T.A. 678, 684-685 (1931). The taxpayer thus had failed to establish that the full commissions were not in fact "earned" when they were received in the tax year the policy premiums were paid. As Bressner Radio, Inc. v. Commissioner, 267 F.2d 520, 526 (2d Cir. 1959), points out, this Court's decision "was thus not a departure from but rather an insistence upon sound accrual accounting for earned income."

than the one in which it accrued." 366 U.S. at p. 385.[13] This recent statement, although made in a case involving the timing of deductions by an accrual basis taxpayer, is equally applicable in determining the tax year in which such taxpayers are to report advance receipts as income.

It is thus evident that a single rule only may be distilled from the Court's decisions that have dealt with the persistent question of when accrual basis taxpayers are to recognize receipts as income, and when they are to deduct expenses from income. The Court has repeatedly determined: 1) as to the reporting of income, "all events" must have occurred that fix the taxpayer's right to funds that may previously have been paid to him or may still be due; and 2) as to taking deductions, "all events" must have occurred that fix the taxpayer's obligation with regard to expense that may previously have been paid by him or that he may yet be required to pay. The prior decisions thus supply no justification for selecting any other year for taxing amounts received than the year in which such amounts—whether received or to be received—are earned as income by the accrual basis taxpayer's performance. No other conclusion is warranted. Accordingly, any policy of the Commissioner that rejects a method of accrual accounting solely because it postpones the reporting as income of amounts received to

[13] The Government's attempt to distinguish the *Anderson, Dixie Pine* and *Security Mills* cases on the ground that in *Consolidated Edison* the taxes had actually been paid by the taxpayer in prior tax years was rejected. The Court, moreover, specifically disapproved of Chestnut Securities Co. v. United States, 104 Ct.Cl. 489 (1945), and Consolidated Edison Co. v. United States, 133 Ct.Cl. 376 (1955), in which the fact of payment of the tax in a prior year had been deemed crucial in determining when the deductible expense had accrued.

tax years subsequent to the year of receipt is without foundation.

2. *The Tax Statutes and Treasury Regulations.* The rule that the decisions of this Court stand for is in full accord with the relevant tax statutes and Treasury Regulations governing accounting for income tax purposes. The statutes and regulations supply plentiful authority for the use by accrual basis taxpayers of accrual accounting methods that precisely and accurately match revenues from services performed in the tax year with related costs of performance, notwithstanding that there may have been advance collection of the revenues. Significantly, these provisions explicitly acknowledge that accrual accounting methods may correctly result in postponing the reporting of advance receipts as income to such taxpayers to a tax year subsequent to that in which they receive such amounts for services to be performed or goods to be delivered thereafter.

It is axiomatic that the Commissioner of Internal Revenue is authorized to recompute a taxpayer's taxable income, as he did in *American Auomobile* and in *Schlude,* only if the taxpayer has no regular accounting method *"or if the method of accounting used does not clearly reflect income"* (emphasis added). Otherwise, "taxable income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes his income in keeping his books." Int. Rev. Code of 1954, §§ 446(a) and (b); Int. Rev. Code of 1939, § 41. Section 451 (a) of the 1954 Code (1939 Code, Section 42(a)), moreover, specifically provides that the taxpayer's accounting method of computing taxable income may be one in which amounts of gross income—or receipts—are accounted for in tax

years other than the year in which such amounts are received:

> "The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, *unless under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.*" (Emphasis added.)[14]

The Treasury Regulations interpreting Sections 446, 451 and their predecessor 1939 Code sections reflect the Commissioner's own recognition of the limits the tax laws place upon his power to recompute a taxpayer's taxable income. Treasury Regulation, § 1.446-1(a)(2) states that "a method of accounting which reflects the consistent application of generally accepted accounting principles in a particular trade or business in accordance with accepted conditions or practices in that trade or business will ordinarily be regarded as clearly reflecting income." With regard to the accrual method of accounting, the Regulation incorporates the long-established "all events" test for determining the tax year in which an accrual basis taxpayer is to report as income payments that have been or are to be received, or to take deductions for expenses paid or to be paid, in any other tax year.[15] (See discussion, pp. 19-25

[14] It should be emphasized that neither the *American Automobile* majority opinion nor the dissent referred to Section 451 and its language which expressly permits items of receipt to be reported as income in a year that is different from the year of receipt.

[15] Treas. Reg., § 446-1(c)(1)(ii) reads in part:

> "*Accrual method.* Generally, under an accrual method, income is to be included for the taxable year when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. Under such a method, deductions are allowable for the taxable year in which all the events have occurred which establish the fact of the liability giving rise to such deduction

above.) And Treasury Regulation, § 1.451.1(a) specifically acknowledges that Section 451 of the 1954 Code authorizes an accrual basis taxpayer to report income in a tax year other than the tax year in which the taxpayer receives payment:

> "General rule for taxable year of inclusion—(a) *General rule.* Gains, profits, and income are to be included in gross income for the taxable year in which they are actually or constructively received by the taxpayer unless includible for a different year in accordance with the taxpayer's method of accounting. Under an accrual method of accounting, income is includible in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. *Therefore, under such a method of accounting if, in the case of compensation for services, no determination can be made as to the right to such compensation or the amount thereof until the serv-*

and the amount thereof can be determined with reasonable accuracy. The method used by the taxpayer in determining when income is to be accounted for will be acceptable if it accords with generally recognized and accepted income tax accounting principles and is consistently used by the taxpayer from year to year. *For example, a taxpayer engaged in a manufacturing business may account for sales of his product when the goods are shipped, when the product is delivered or accepted, or when title to the goods passes to the customer, whether or not billed, depending upon the method regularly employed in keeping his books. . . .*" (Emphasis added.)

The "manufacturing business" cited as an example of an accrual basis taxpayer might receive advance payments from customers for products that will be delivered, or title to which will pass to, the customers, in a subsequent tax year. The regulation authorizes such advance receipts to be reported as income at that later time. See *Woodlawn Park Cemetery Co.*, 16 T.C. 1067 (1951), *acq.*, 1951-2 Cum. Bull. 4 (prepayment for cemetery crypts); *Veenstra & De Haan Coal Co.*, 11 T.C. 964 (1948), *acq.* 1949-1 Cum. Bull. 4 (prepayment for coal).

> *ices are completed, the amount of compensation is ordinarily income for the taxable year in which the determination can be made.* Under the cash receipts and disbursements method of accounting, such an amount is includible in gross income when actually or constructively received. Where an amount of income is properly accrued on the basis of a reasonable estimate and the exact amount is subsequently determined, the difference, if any, shall be taken into account for the taxable year in which such determination is made. . . ." (Emphasis added.)[16]

The Treasury Regulations under the 1939 Code similarly recognized that amounts received by an accrual basis taxpayer may be properly accounted for and reported as income in a different tax year than the year of receipt (Treas. Reg. 118, § 39.41-2(a)):

> "*Approved standard methods of accounting will ordinarily be regarded as clearly reflecting income.*

[16] Section 461 and Regulation, § 1.461 are the comparable provisions governing the proper tax year in which deductions are to be taken. Section 461(a) reads:

> "General Rule.—The amount of any deduction or credit allowed by this subtitle shall be taken for the taxable year which is the proper taxable year under the method of accounting used in computing taxable income."

Regulation, § 1.461-1(a)(2) reads in part:

> "*Taxpayer using an accrual method.* Under an accrual method of accounting, an expense is deductible for the taxable year in which all the events have occurred which determine the fact of the liability and the amount thereof can be determined with reasonable accuracy. . . . While no accrual shall be made in any case in which all of the events have not occurred which fix the liability, the fact that the exact amount of the liability which has been incurred cannot be determined will not prevent the accrual within the taxable year of such part thereof as can be computed with reasonable accuracy. . . ."