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Manzanar Relocation Center
Manzanar, California

OPA:RMT

June 1, 1943

MEMORANDUM TO: Mr. Ralph P. Merritt, Project Director — OPINION NO. M-1

Attention: Dr. William J. Bruce, Chief, Consumer Enterprises

SUBJECT: Applicability of Retailers' Excise Tax on Toilet Preparations to Manzanar Cooperative Enterprises, Inc.

Dr. William J. Bruce, Chief, Consumer Enterprises, has asked whether the Retailers' Excise Tax on Toilet Preparations enacted by the Revenue Act of 1941 is applicable to the Manzanar Cooperative Enterprises, Inc. He also requested, if in my opinion the tax was applicable, that I should prepare a statement for the Commissioner of Internal Revenue in explanation of the Cooperative's failure to have paid the tax when due and requesting that no penalty be imposed.

I.

The Retailers' Excise Tax on Toilet Preparations appears in the first supplement to the 1940 edition of the United States Code as 26 U.S.C. 2402, which reads as follows:

"(a) Tax.

There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 per centum of the price for which so sold: Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders, and any similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes.

"(b) Beauty parlors, etc.

For the purposes of subsection (a) the sale of any article described in subsection (a) to any person operating a barber shop, beauty parlor, or similar establishment shall be considered a sale at retail; resale by such personshall be subject to tax as a sale at retail, but there shall be credited against the tax payable by such person with

respect to such resale the amount of tax paid on the sale to such person."

Subsection (a) imposes the tax upon prescribed articles sold at retail. Subsection (b) would be of no interest except for the fact that the cooperative does operate a beauty parlor and barber shop. In accordance with this subsection, a tax will have to be paid on all toilet preparations purchased by the Cooperative for use in the barber or beauty shop.

Although section 2402 imposes the tax upon the "articles sold", section 2403 of title 26 provides that "every person" who sells at retail any of the prescribed articles shall pay the tax. This section reads in full as follows:

"(a) Every person who sells at retail any article taxable under this chapter shall make monthly returns under oath in duplicate and pay the taxes imposed by this chapter to the collector for the district in which is located his principal place of business or, if he has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

"(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid.

"(c) In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations. There shall also be excluded, if stated as a separate charge, the amount of any retail sales tax imposed by any State or Territory or political subdivision of the foregoing, or the District of Columbia, whether the liability for such tax is imposed on the vendor or the vendee."

The word "person", as used in statutes of this nature, ordinarily includes corporations. The Hanscom Cooperative Enterprises, Inc., is accordingly,

a "person who sells at retail any articles taxable under this chapter."

In the light of the opinions that have been issued with regard to the tax liability of consumer enterprises at relocation centers, it is clear that the Manzanar Cooperative Enterprises, Inc., is a private corporation and not entitled to ~~any~~ possible immunity from taxation as a federal instrumentality. (See Op. Sol. No. 43; Op. Sol. No. 44; Op. Sol. No. 37; and Op. Reg. Atty. SP-14.) It is, therefore, my opinion that the Retailers' Excise Tax on Toilet Preparations is applicable to the Manzanar Cooperative Enterprises, Inc. This conclusion is substantiated by 26 U.S.C. 3406, which exempts from the tax the sale of articles, "(a) for the exclusive use of the United States, any State, Territory of the United States, or any political sub-division of the foregoing, or the District of Columbia; (b) for export, or for shipment to a possession of the United States, and in due course so exported or shipped." Obviously, these exemptions do not apply to a private corporation such as the Manzanar Cooperative Enterprises, Inc.

II.

The first return filed by the Manzanar Cooperative Enterprises, Inc., pursuant to the Retailers' Excise Tax on Toilet Preparations was filed with the Collector of Internal Revenue on May 15, 1943. This return was for the period June, 1942 to April, 1943. The collector has notified the Cooperative that the return is delinquent and a penalty will be assessed unless a reasonable cause for delinquency can be established. The collector has enclosed an affidavit form which provides that, "I hereby solemnly swear (or affirm) that my delinquency in filing return of Toilet Preparations on Form 725 A for the period June 1942 to April 1943 as required by the Act of 1941 was due to no intent to violate the law but was occasioned by - - - - - - - - - - - -. I, therefore, respectfully request that this statement be accepted as satisfactory and that no further action be taken against me in the matter."

Mr. Bruce has asked me to prepare a paragraph to be inserted in the blank part of this affidavit. I am submitting the following statement for his consideration in preparing this affidavit: "I hereby solemnly swear (or affirm) that my delinquency in filing return of Toilet Preparations on Form 725 A for the period June 1942 to April 1943 as required by the Act of 1941 was due to no intent to violate the law but was occasioned by the indefinite legal status of the Manzanar Cooperative Enterprises and lack of information as to the tax on toilet preparations. The Enterprises was incorporated September 5, 1942, and assumed the assets of the previous temporary Enterprises on October 1, 1942. There was uncertainty as to whether the temporary Enterprises was a private business, subject to taxation, or a federal instrumentality, exempt from taxation. Legal opinions were issued determining the tax liabilities of the temporary

and Cooperative Enterprises, as follows: State Sales Tax (July 6, 1942); State and Federal Income Taxes (November 19, 1942); Federal and State Admissions Taxes (January 22, 1943) and Social Security Taxes (February 16, 1943). Thus, it was not until several months after June, 1942, that it was clear that the temporary and Cooperative Enterprises were subject to taxation like any other private business. Moreover, it was not until our auditor was here in March, 1943, that we realized we should have filed monthly returns pursuant to the 1941 tax on toilet preparations."

ROBERT B. THROCKMORTON

Robert B. Throckmorton
Project Attorney

cc: Philip N. Glick
Edgar Bernhard
Mr. William J. Bruce
Mrs. Amy Adams
To all Project Attorneys
RBT/ps

Manzanar Relocation Center
Manzanar, California

OPA:RBT

June 2, 1943

MEMORANDUM TO: Mr. Ralph P. Merritt, Project Director — OPINION NO. M-2

Attention: Mr. Earl W. Barton, Evacuee Property Officer

SUBJECT: Transportation at Government Expense of Property of Evacuees Who Relocated Prior to Issuance of Administrative Instruction No. 78.

Mr. Earl Barton, Evacuee Property Officer, has asked whether evacuees who left Manzanar on indefinite leave prior to January 23, 1943, the date when Administrative Instruction No. 78 was issued, are entitled to the transportation of their personal property at government expense as prescribed in the administrative instruction. The problem has arisen because two girls, who relocated from Manzanar to Minneapolis, Minnesota, in December, 1942, have requested the shipment of their personal property to them.

Administrative Instruction No. 78 provides for two types of free transportation of evacuee property, namely (1) the movement of all the household goods of an evacuee family (known as the "one free move" policy), and (2) the transportation of not to exceed 500 pounds of the household and personal effects belonging to an evacuee and his immediate family (known as the "500-pound provision").

The administrative instruction clearly contemplates that evacuees who are on indefinite leave may obtain the benefits of the "one free move" policy. This appears in paragraphs A, H and J of item III of the instruction which pertains to the storage and transportation of property at government expense. Thus, paragraph A provides in part that, "An evacuee on indefinite leave may present his request for the storage or transportation of his property, directly to the Transportation Section of the Evacuee Property Office at San Francisco or to the Project Director of the project at which he formerly resided." Paragraph H provides that, "Evacuees granted indefinite leave from a project and desiring their household and personal effects forwarded from private storage, or from government storage, shall present their request to the Transportation Section of the Evacuee Property Office at San Fran-

cisco * * *." Paragraph J provides that, "Transportation of household and personal effects at government expense for evacuees on indefinite leave shall include packing and crating," etc.

Although it could be contended that these provisions merely authorize the free shipment of property to evacuees who have obtained indefinite leave since the effective date of the administrative instruction, it is, in my opinion, more reasonable to interpret the instruction as being applicable to all evacuees who have obtained indefinite leave from the center regardless of whether leave was obtained before or after January 23, 1943. The broad policy involved in Administrative Instruction No. 78 appears to be that of giving each evacuee family one shipment of its personal effects at government expense at any time after evacuation. Moreover, those who had already obtained a free shipment of their property prior to the date of issuance of Administrative Instruction No. 78 were administratively held to have exhausted the "one free move" provided for in the instruction, thus indicating that the policy was retroactive. It is, therefore, my opinion that evacuees obtaining indefinite leave prior to the effective date of Administrative Instruction No. 78 are nevertheless entitled to the benefits of the "one free move" policy.

It is not quite as clear that the 500-pound provision of the instruction is applicable to evacuees obtaining indefinite leave prior to January 23, 1943. The purpose of the 500-pound provision is "to assist evacuees in relocating" and it may be argued that those who relocated prior to the time when this policy was announced do not now need "assistance in relocating". However, I do not believe this provision is to be construed so narrowly; assistance in relocating can be given after resettlement as well as before. Furthermore, I see no reason for distinguishing between the "one free move" policy and the "500-pound" provision in their applicability to evacuees who relocated before the effective date of the instruction. It is, accordingly, my opinion that the 500-pound provision, as well as the "one free move" policy, is applicable to evacuees who obtained indefinite leave prior to January 23, 1943.

These conclusions are not inconsistent with a recent ruling by the Solicitor with reference to the applicability of Administrative Instruction No. 45 (Revised) to an evacuee who had transferred from Granada Relocation Center to Boulder, Colorado, prior to the effective date of that instruction (See item 8 of the Solicitor's letter of May 10, 1943, to the Granada Project Attorney). Administrative Instruction No. 45 (Revised) is specifically made applicable "only to

evacuees who have been granted indefinite leave after the date of this instruction for the purpose of accepting employment" (Underscoring supplied). The fact that this instruction is made applicable only to those who are granted indefinite leave after its effective date, clearly distinguishes it from Administrative Instruction No. 78, which contains no such provision.

ROBERT B. THROCKMORTON

Robert B. Throckmorton
Project Attorney

cc: Philip M. Glick
Mr. H. W. Barton
Mrs. Lucy Adams
Edgar Bernhard
All Project Attorneys
RBT/yz

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WAR RELOCATION AUTHORITY
Manzanar Relocation Center
Manzanar, California

In reply, please refer to:
OPA:RBT

June 4, 1943

MEMORANDUM TO: Mr. Ralph P. Merritt
Project Director

OPINION NO. M-3

Attention: Mr. Edward G. Chester
Superintendent of Housing Section

SUBJECT: Tax on Playing Cards Manufactured and Sold by an Evacuee to Center Residents

Mr. Edward G. Chester, Superintendent of Housing Section, has asked whether an evacuee manufacturer of "hana fuda" (playing cards), who disposes of them through sale to the evacuee residents of the Center, is subject to taxes imposed under the Internal Revenue Code. The evacuee who put the question to Mr. Chester has been making these playing cards as a hobby and he wished to know whether it would be necessary for him to comply with any laws if he sold the cards to center residents.

In my opinion, evacuees manufacturing playing cards in Relocation Centers and selling them to the residents of the Center are subject to taxes imposed under the Internal Revenue Code.

Under Section 1631 (a) of Title 26, U.S. Code, 1940 Edition, a manufacturer is defined as follows:

> "Every person who offers or exposes for sale playing cards, whether the articles so offered or exposed are of foreign manufacture and imported or are of domestic manufacture, shall be deemed the manufacturer thereof, and subject to all the duties, liabilities, and penalties imposed by law in regard to the sale of domestic articles without the use of proper stamps denoting the tax paid thereon."

This definition clearly includes evacuees who manufacture playing cards and sell them in a Relocation Center.

It is required that every manufacturer of playing cards register with the Collector of the District his name or style, place of residence, trade or business, and the place where such business is to be carried on (26 USC 1631 (b)). Every manufacturer of playing cards who fails to register as

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provided and required shall be subject to a penalty of $50 (26 USC 1831 (c)).

The Internal Revenue Code provides that upon every pack of playing cards containing not more than fifty-four cards, manufactured or imported, and sold, or removed for consumption or sale, a tax of eleven cents per pack is levied for the period after June 30, 1940, and before July 1, 1945 (26 USC 1807). The ordinary tax is ten cents per pack but the one cent extra is a defense tax levied for a five-year period. This tax is imposed on the manufacturer of the cards.

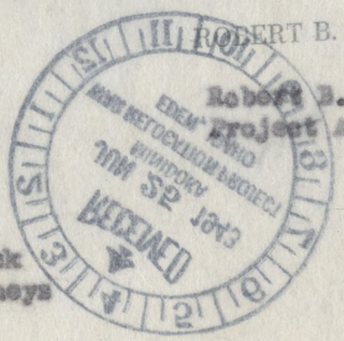
It is also provided under Section 1820, Title 26 of the U.S. Code, 1940 Edition, that a manufacturer who sells the cards without the full payment of tax is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than $100 for each offense. Non-payment or evasion of the tax is punishable by payment of the tax plus penalty and a fine not to exceed $10,000 or imprisonment not to exceed one year (29 USC 1821).

It is doubtful that it will be practicable for the evacuee in question to make these playing cards for sale to the Center residents because of the various requirements he has to fulfill before he is permitted to manufacture for sale. No doubt, the production of these cards by the evacuee will be on a very small scale and it will not be to his advantage to be a manufacturer for sale and thereby be compelled to fulfill the requirements as set down in the Internal Revenue Code. Instead of selling these cards to residents, the evacuee might find it more expedient to dispose of them as gifts to his friends. If the receivers of these cards wish to thank the maker they could individually do so in whatever manner and form they wish, as long as the favor given by the receivers is in fact a gift and not a consideration for the cards.

An additional reason why the evacuee should not <u>sell</u> the cards, is to be found in Administrative Instruction No. 26, Section IV, which provides that: "Private enterprises for the sale at retail of consumer goods and services to Center residents shall not be permitted." The sale of these playing cards by the evacuee manufacturer in question, to another evacuee in the Center, is a sale at retail and thereby not permitted by this Administrative Instruction.

ROBERT B. THROCKMORTON

Robert B. Throckmorton
Project Attorney



cc: Mr. E. G. Chester
Mr. R. L. Brown
Mrs. L. Adams
Mr. Philip M. Glick
All project attorneys
SUchimura/ys/yk

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Mr. Ralph F. Merritt
6/14/43
Page 2

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It is doubtful that it will be practicable for the evacuee in question to make these playing cards for sale to the Center residents because of the various requirements he has to fulfill before he is permitted to manufacture for sale. No doubt, the production of these cards by the evacuee will be on a very small scale and it will not be to his advantage to be a manufacturer for sale and thereby be compelled to fulfill the requirements as set down in the Internal Revenue Code. Instead of selling these cards to residents, the evacuee might find it more expedient to dispose of them as gifts to his friends. If the receivers of these cards wish to thank the maker they could individually do so in whatever manner and form they wish, as long as the favor given by the receivers is in fact a gift and not a consideration for the cards.

An additional reason why the evacuee should not sell the cards, is to be found in Administrative Instruction No. 25, Section IV, which provides that: "Private enterprises for the sale at retail of consumer goods and services to Center residents shall not be permitted." The sale of these playing cards by the evacuee manufacturer in question, to another evacuee in the Center, is a sale at retail and thereby not permitted by this Administrative Instruction.

ROBERT B. THROCKMORTON

Robert B. Throckmorton
Project Attorney

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WAR RELOCATION PROJECT
EDEN, IDAHO

cc: Mr. H. G. Chester
Mr. R. L. Brown
Mrs. L. Adams
Mr. Philip M. Glick
All project attorneys

RBThrockmorton/ys/yk

MEMORANDUM TO: Mr. Ralph P. Merritt, Project Director

OPINION NO. M-4

SUBJECT: Status of Citizenship of Female United States Citizens Married to Alien Japanese

During the recent registration at Manzanar, there was uncertainty as to the citizenship status of women citizens of the United States who married Japanese nationals, and several members of the staff requested information with regard to this subject. In particular, questions were asked as to the date when nisei girls could marry issei without losing their American citizenship. This question has been answered in footnote 16 to Solicitor's Opinion No. 63, issued on April 9, 1943; however, because many staff members may have overlooked this information in reading the Opinion, I am taking this occasion to restate and enlarge upon it.

From March 2, 1907, until September 22, 1922, any American woman who married a "foreigner" took the nationality of her husband. 34 Stat. 1228 (1907). On September 22, 1922, the so-called Cable Act was enacted, providing that, in general, a female citizen of the United States who married an alien after the date of the Act did not lose her citizenship unless she formally renounced it. 42 Stat. 1022 (1922). By reason of a special proviso to the Act, however, a female American citizen who married an alien ineligible to citizenship lost her United States citizenship thereby. The Cable Act of 1922 thus did not preserve the citizenship status of nisei women marrying issei because the issei were aliens ineligible to citizenship and nisei marrying them became Japanese nationals and lost their American citizenship.

On March 3, 1931, an amendment to the Cable Act was enacted which deleted the proviso that a female citizen of the United States marrying an alien ineligible to citizenship lost her citizenship. 46 Stat. 1511, 1512 (1931). Thus, since March 3, 1931, a woman has not lost her American citizenship even by marriage to an alien ineligible to citizenship unless she has expressly renounced it. As a general rule, therefore, nisei women who married issei prior to March 3, 1931, lost their American citizenship whereas those marrying after this date retained their citizenship in this country.

Many of the provisions of the Cable Act were repealed by the Nationality Act of 1940 (8 USC 501 et sec). I recently asked the Solicitor whether this Act had changed the existing law

with respect to the citizenship status of American women marrying aliens. He discussed this problem with members of the Board of Immigration Appeals in the Department of Justice who expressed the opinion that the Nationality Act of 1940 did not change the law with regard to this subject. Consequently, nisei women who marry issei subsequent to the effective date of the Nationality Act of 1940 do not forfeit their American citizenship.

ROBERT B. THROCKMORTON

Robert B. Throckmorton
Project Attorney

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WAR RELOCATION AUTHORITY
Manzanar Relocation Center
Manzanar, California

In reply, please refer to: RBT/OPA

Opinion No. M-5

July 10, 1943

MEMORANDUM TO: Mr. Ralph P. Merritt, Project Director

ATTENTION: Mr. Robert L. Brown
Dr. William J. Bruse

SUBJECT: Relationship between the Manzanar Cooperative Enterprises, Inc., and the Manzanar Free Press.

Administrative Instruction No. 8, Supplement No. 4, provides that the consumers' cooperative association shall take over the operation of the newspaper at each project as soon as possible. Mr. Robert Brown, Assistant Project Director and former Reports Officer, and Dr. William J. Bruce, Chief of Consumer Enterprises, have consulted me as to the legal status of the Free Press and the Manzanar Cooperative Enterprises, Inc. Specifically, they ask(1) w hat has been the relationship between the Free Press and the Consumer Enterprises, and (2) what possible relationships could exist between the Manzanar Cooperative Enterprises, Inc., and the newspaper in the future.

The Manzanar Free Press was first printed in mimeographed form on April 11, 1942. All expenses were borne by the government and the newspaper was supervised and published by the Reports Officer on behalf of the government. On July 22, 1942, the first printed edition of the Free Press, containing commercial advertisements, was published. At that time, the Manzanar Community Enterprises had not been incorporated and merely constituted a trust operated for the benefit of the evacuees by three trustees. It was informally agreed that the Manzanar Consumer Enterprises would underwrite the publication of the Manzanar Free Press and would pay the difference between the cost of publication and the income received from advertising and other sources. It was generally understood that this deficit, to be borne by the community enterprises, would amount to approximately $300 per month. On September 5, 1942, the Manzanar Community Enterprises, Inc., was incorporated, and on October 1st, this corporation assumed all of the assets

and liabilities of the Manzanar Community Enterprises. The corporation has continued to underwrite the obligations of the Manzanar Free Press.

In my opinion, the Manzanar Free Press is confronted with a choice of three possibilities as to its future legal status: (1) It can operate as an agency of the War Relocation Authority; (2) It can operate as a separate legal entity by establishing a trust or by organizing a Free Press Cooperative or some other form of private enterprise; or (3) It can operate as a department of the Manzanar Cooperative Enterprises, Inc. It is also my opinion that the Free Press, in its past operations, has come within at least two of these three categories. There is no question that, prior to July 15, 1942, it came within the first category of being an agency of the War Relocation Authority. On or about July 15, 1942, however, the newspaper was published in printed form, sold advertising space and had a definite connection with the consumer enterprises. It was clearly the intention of those concerned to divorce the newspaper from any official connection with the War Relocation Authority, as the cost of printing was no longer borne by the authority nor was it intended that the returns from subscriptions and advertising should be paid into the United States Treasury as would be necessary if the Free P ress were an agency of the War Relocation Authority (31 USC 487).

Although the Free Press ceased to operate as an agency of the War Relocation Authority on or about July 15, 1942, there is room for question as to whether from that time it operated as a department of the consumer enterprises or as an independent organization financed by the consumer enterprises. Some of those working on the Free Press believed that they were operating as a separate entity subsidized by the consumer enterprises. However, I do not share this opinion, as the Free Press had no formal organization and as such operations would have been in violation of Administrative Instruction No. 26, which prohibits private enterprises, other than a single cooperative at each relocation center, without special permission by the Director of the War Relocation Authority. It is more probable that the Free Press has been operating as a department of the consumer enterprises which has been legally liable for and in fact has paid all expenses incurred by the newspaper.

In order to avoid future uncertainty as to the relationship between the Free Press and the Manzanar Cooperative Enterprises, Inc., the Free Press should either formally establish itself as an agency of the War Relocation Authority or as a separate legal entity, or the Directors of the Manzanar Cooperative

Enterprises, Inc., should, by formal resolution, recognize the fact that the Free Press is a department of the corporation. A procedure that has proved satisfactory at the Minidoka Relocation Center has been the execution of an agreement betwwen the cooperative and Project Director clarifying the status of the newspaper as a department of the cooperative corporation. I am transmitting herewith a copy of this memorandum, with suitable changes adapting it to this project, for your consideration and comment. Briefly, this memorandum provides for the establishment of an Editorial Board consisting of project and cooperative representatives. It also provides that this board would have to be consulted before any changes in the editorial policy or in the newspaper personnel could be made. All members of the newspaper staff will be furnished and paid by the WRA, and they will be administratively responsible to the P roject Reports Officer.

I shall be glad to assist in any further revision of the proposed agreement or in the preparation of any legal document or resolutions that may be required to clarify the legal status of the Manzanar Free Press.

Robert B. Throckmorton
Project Attorney

SIMPSON

Manzanar Relocation Center
Manzanar, California

OPA:RBT

Opinion No. M-6

MEMORANDUM TO: Mr. Ralph P. Merritt,
Project Director

SUBJECT: Employment of Minors at Manzanar

Mr. Arthur Miller, Chief of the Employment Division, has informed me that a group of boy scouts from 12 to 17 years of age is seeking part-time employment in order to raise money for their scout activities. Mr. Miller asked what legal restrictions there are with regard to the employment of minors within this age group.

The subject is covered by Administrative Instruction No. 27, Supplement 1, which provides that children below the age of 14 may not be employed within the war relocation areas. If it were not for this administrative instruction, there would be no legal objection under California law to the employment of minors between the ages of 12 and 14 at certain types of employment on Saturdays and during school vacations. 1.179, California School Code(1942). However, in accordance with the administrative instruction, the boy scouts, who are within the 12 and 13 year age groups, cannot be employed by the War Relocation Authority at any time.

The administrative instruction provides that children 14 to 16 may be employed in non-factory employment (but only outside school hours) and it permits the employment of minors 16 and above in factories. These provisions are generally similar to those prescribed by California law. The California law provides that minors between the ages of 14 and 16 may work during off-school hours at other than prohibited occupations. 1.1777, California School Code (1942). The work that is prohibited to minors under 16 years of age includes the following occupations: Adjusting belt to machinery (Section 1292-a, California Labor Code;)Operator of circular or band saw, or wood polisher (Section 1293-a, California Labor Code); Building or construction work (Section 1294-e, California Labor Code); Operating motor car or truck (Section 1294-g, California Labor Code); Work dangerous to life or limb or injurious to health or morals of such minor (Section 1294-i, California Labor Code). In other words, both the California law and the administrative instruction prohibit the employment of minors between 14 and 16 at factory occupations and they also prohibit employment of such minors during school hours.

There are few restrictions upon the employment of minors of 17 years of age and over. The administrative instruction prohibits the employment of minors under 18 in certain prescribed "hazardous occupations". The California law requires that all minors under 18 years of age must obtain work permits with the exception of minors who are (1) over 16 years, and (2) graduates of approved high schools.

Administrative Instruction No. 27, Supplement 1, provides that its provisions will be controlling as to the employment of minors by the War Relocation Authority except that "if in any case the State standards are higher, they should be observed." The California state standards do not seem to be higher than those of the administrative instruction, except (1) as to the enumeration of certain types of work prohibited to minors under 16 that are not covered by the WRA prohibition of "factory" employment of such persons (eg. driving motor vehicles, building or construction work), and (2) as to the general California requirement that work permits be issued to minors under 18 years of age. The procedure for obtaining work permits is handled at Manzanar by the Education Department. In order that you may have more detailed information with regard to Federal and California Child Labor Laws, I am transmitting with this Opinion a memorandum on this subject, dated June 17, 1943, prepared by Mr. Henry Tsurutani.

By way of summary, employment may be offered to the boy scout group as follows: (1) Members younger than 14 are not eligible for employment, (2) Those between 14 and 16 may be employed outside of school hours, after obtaining a work permit from the State, at occupations other than in the furniture or clothing factories, as automobile or truck drivers, in building or construction work or in physically or morally dangerous work, (3) Those 16 and 17 years of age may work at any type of employment, other than in "hazardous occupations", after a work permit has been obtained from the State.

Robert B. Throckmorton
Project Attorney

Enclosure
RBT/YK

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Manzanar Relocation Center
Manzanar, California

OPA:RBT

July 15, 1943 OPINION NO. M-7

MEMORANDUM TO: Ralph P. Merritt
Project Director

SUBJECT: Property of Repatriates and Expatriates.

You have requested my opinion as to the property rights of those evacuees who are accepted for repatriation or expatriation to Japan.

Much of the desired information is found in Administrative Instruction No. 65 which pertains to the subject of Repatriation and Exchange, with Special Reference to Japan. This instruction provides that no repatriate may take more than $300 in money out of the United States (Paragraph X, A). It further provides that the following general class of articles cannot be taken from the Relocation Center by any Japanese repatriate:

"1. Any printed matter or documents (except passports), including books of all types, diaries, notebooks, files and papers, etc.
"2. Any financial papers, including stocks, bonds, notes and bills receivable, mortgages, deeds, and all other evidences of property ownership, credit, or debit.
"3. Photographs, paintings, sketches (except portraits), or maps.
"4. Radios, cameras, pianos, and furniture.
"5. Sewing machines.
"6. Fire-arms.
"7. Gold objects, except ordinary personal ornaments and jewelry.
"8. Any other article which might contain information helpful to the enemy or which might be convertible into international credits.
"9. All articles the exportation of which requires export license under Federal regulations." (Paragraph XI, C).

Repatriates are permitted to take without charge 30 cubic feet of "hold" baggage and, in addition thereto, three suitcases (Paragraph


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EDEN, IDAHO

VIII, A). They may also take additional "hold" baggage at their own expense, but they are discouraged from doing so, unless they have imperative need for taking excess baggage (Paragraph VIII, B and C).

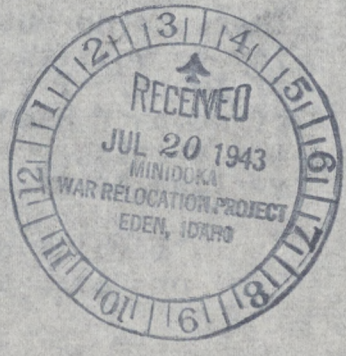
It is apparent from the foregoing provisions that, in general, repatriates can take with them only a comparatively small amount of any valuable property that may be owned by them. It is because of this situation that you raised the question as to what disposition could be made of property left behind in the United States by them.

It seems likely that the remaining property of all repatriates and expatriates will be vested by the Alien Property Custodian. The Administrative Instruction provides that, when a repatriation movement is imminent, the WRA Washington office will notify the Alien Property Custodian, who will send a representative to each Center "to make such arrangements as he may deem necessary concerning property left behind." The Instruction also provides that the WRA will not undertake to manage, or in any other way be responsible for property left behind by repatriates. It also provides that the Project Director will discuss with the representative of the Alien Property Custodian, what further action, if any, may be necessary on the part of the WRA to divest itself of the responsibility for any property left behind by repatriates. The necessary arrangements are then to be worked out by the Chief of the Evacuee Property Division in San Francisco with the Alien Property Custodian representative in San Francisco.

The Alien Property Custodian operates under the authority of the Trading with the Enemy Act as amended by the First War Powers Act (50 USC App. 616). The Act authorizes the President to vest "any property or interest of any foreign country or national thereof". Pursuant to this statute, Executive Order No. 9113, which prescribes the function of the Alien Property Custodian, was issued. This Order authorizes the Alien Property Custodian to take such actions as he deems necessary in the national interest, including the managing, supervising, or vesting of any property within the United States owned or controlled by any designated enemy country or "nationals" thereof. Japan, of course, is a designated enemy country.

There is no question that the Alien Property Custodian has authority to vest the property of Issei, as they are clearly "nationals" of Japan. I informally submitted to the Solicitor the question of whether Nisei could be considered "nationals" and subject to the vesting power of the Alien Property Custodian. The Solicitor replied to my inquiry as follows:

> "I think we may assume at this time that when an evacuee, who is a citizen of the United States, is expatriated, his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property may be vested by the Alien Property Custodian and handled as any other property coming under his jurisdiction, and that the War Relocation Authority will follow the same procedure with respect to property of citizens of the United States who are expatriated as it follows with respect to aliens who are repatriated. If any questions arise with respect to this matter, they may be worked out when repatriation of the applicants is more imminent."

The Solicitor arrived at this conclusion because the definition of the term "nationals" as used in Executive Order No. 9115 is very broad and includes persons whom there is reasonable cause to believe are "subjects or citizens" of enemy countries. It is reasonable to presume, particularly in view of the principle of dual citizenship, that there is cause to believe that most persons who have applied for repatriation are "subjects or citizens" of Japan, even though some of them are also citizens of the United States.

It thus appears that the property of all repatriates or expatriates may be vested by the Alien Property Custodian. I am advised by the Solicitor that the effect of the vesting order by the Alien Property Custodian is to put complete title to the property involved in the United States. Moreover, "nationals" have no choice in respect to turning their property over to the Alien Property Custodian, nor does the War Relocation Authority have any choice in regard to this matter. However, if the Alien Property Custodian does not choose to vest property, he is not required to do so, and the repatriates or expatriates may then make personal arrangements for the care and custody of their property in the United States (See Paragraph VIII, D, Administrative Instruction No. 65). Once the property of repatriates or expatriates has been vested by the Alien Property Custodian, there is no assurance that the property will ever be returned. At the present time, no authoritative arrangements have been made as to the return of property or its proceeds vested by the Alien Property Custodian. After the last World War, Congress enacted appropriate statutes designed to permit the return of such properties. It is possible that similar statutes will be enacted after the present war. The Solicitor has also suggested that this subject may be considered in connection with the Treaty of Peace at the termination of the war. However, we are certainly unable to give any assurance to repatriates or expatriates that property owned by them and vested by the Alien Property Custodian will ever be returned.

By way of summary, it is my opinion that we should advise repatriates and expatriates (1) that they can take only a small amount of property with them when they leave the United States, and (2) the property that is left behind will probably be vested by the

Alien Property Custodian and no assurance can be given that it will ever be returned to the former owner.

ROBERT B. THROCKMORTON

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