right of review should be given any member who claims discriminatory exclusion by a union.

In the past, the focussing of attention on secured union's abuses has shifted opposition from the abuses themselves to union security in general. This confusion in the popular and legislative mind has so obscured the problem that discrimination is forgotten in the battle over banning security altogether. But indefensible as discriminatory union practices may be, they are not eliminated by abolishing union security devices which have historically resulted from the fundamental insecurity of labor's position in the economy. Recognition of union security as a natural and useful product of—and aid to—the collective bargaining relationship would disperse confusion and clear the way for direct action on the real problem—union discrimination in admission, exclusion and expulsion.

RAYMOND R. FARRELL†

DEDUCTIBILITY OF PENALTY PAYMENTS AS BUSINESS EXPENSES*

IN deducting "ordinary and necessary" business expenses from his gross income,[1] the taxpayer may include any damages paid to private parties for violations of a statute.[2] He has not been permitted, however, to deduct pen-

remedies within the union he may appeal to the State Labor Relations Commission which will conduct hearings to determine whether the individual was unfairly denied admission to membership or whether the discipline was violative of the union by-laws or constitution, was imposed without fair hearing, was not warranted, or is not in accord with public policy. Upon finding for the individual the Board issues an order to the union to admit him, and if the union refuses, the Board issues an order to cease and desist efforts aimed at securing the employee's discharge.

As to the effectiveness of this legislative scheme, see Aaron & Komaroff, *Statutory Regulation of Internal Union Affairs—I*, 44 ILL. L. REV. 425, 455 (1949).

† Member of the second-year class, Yale Law School.

* Rossman v. Commissioner, 175 F.2d 711 (2d Cir. 1949).

1. "In computing net income there shall be allowed as deductions all the ordinary and necessary business expenses paid or incurred during the taxable year in carrying on any trade or business. . . ." INT. REV. CODE § 23(a)(1).

2. Helvering v. Hampton, 79 F.2d 358 (9th Cir. 1935) (allowing deduction of damages paid in a fraud action): "We cannot agree that private wrongdoing in the course of business is extraordinary within the meaning of the taxing statute allowing deductions for 'ordinary and necessary expenses.' The statute itself makes no such exception, and since it is construable as we have interpreted it, that construction against the collector is required by the long established rule of interpretation of the statute." *Id.* at 360.

No distinction is made between damages paid to private complainants in common law actions and those paid to them under regulatory statutes. International Shoe Co., 38 B.T.A. 81 (1938), *acq.*, 1938-2 CUM. BULL. 17 (conspiracy in restraint of trade); Huff, Andrews, & Thomas, 1 B.T.A. 542 (1925) (payment to Red Cross and other charities for violation of Food Control Act); I.T. 3627, 1943 CUM. BULL. 111 (treble alties paid to government agencies.[3] Courts have felt that the effect of a penalty would be watered down by the prospect of partial recovery through a tax saving.[4] The contrasting treatment in effect assumes that while private damages rarely contribute to law enforcement, public penalties almost always

---

damages paid to customers under Emergency Price Control Act); I.T. 3762, 1945 CUM. BULL. 95 (double damages under Fair Labor Standards Act); I.T. 3412, 1940-2 CUM. BULL. 174 (awards to employees under the National Labor Relations Act).

3. Federal statutes: *e.g.*, Helvering v. Superior Wines and Liquors, Inc., 134 F.2d 373 (8th Cir. 1937) (liquor regulations); Great Northern Ry. v. Commissioner, 40 F.2d 372 (8th Cir. 1930), *cert. denied*, 282 U.S. 855 (1930) (Safety Appliance Act, and similar acts); Scioto Provision Co., 9 T.C. 439 (1947) (Price Control Act); Bonnie Bros., Inc., 15 B.T.A. 1231 (1929) (prohibition law). See also G.C.M. 11358, XII-1 CUM. BULL. 29 (1933) (tax penalties); I.T. 1174, I-1 CUM. BULL. 269 (1922) (antitrust laws).

State statutes: *e.g.*, Commissioner v. Longhorn Portland Cement Co., 148 F.2d 276 (5th Cir. 1945), *cert. denied*, 326 U.S. 728 (1945) (antitrust laws); Helen B. Achelis, 28 B.T.A. 244 (1933) (tax penalties).

Local police regulations: Unpublished Office Decision summarized in 1 C.C.H. 1950 FED. TAX REP. ¶ 146,322 (regulations such as parking restrictions and building codes).

4. This vague policy was first enunciated in England, where statutory deductions for business expenses are similarly limited: Inland Revenue Comm'rs v. Warnes & Co., [1919] 2 K.B. 444. Federal courts have endeavored to rationalize their position by arguing that expenses arising out of violation of laws are not "ordinary," or in any event are not "necessary," *e.g.*, National Outdoor Advertising Bureau, Inc. v. Helvering, 89 F.2d 878 (2d Cir. 1937), or that they are not "proximately caused" by business activity, *cf.* Sarah Backer, 1 B.T.A. 214 (1924). But most courts now explicitly state that the disallowance is based solely on public policy. *E.g.*, United States v. Jaffray, 97 F.2d 488 (8th Cir. 1938) *aff'd on other grounds sub nom.* United States v. Bertelsen & Peterson Engineering Co., 306 U.S. 276 (1939); Burroughs Bldg. Materials Co. v. Commissioner, 47 F.2d 178 (2d Cir. 1931); Note, 54 HARV. L. REV. 852 (1941).

In order to exclude damage payments to private persons under regulatory statutes from the application of this public policy against diminishing the effect of legal sanctions, the taxing authorities have sometimes relied upon the purely verbal distinction between "penal" and "remedial" damages. The inconclusiveness of this formal categorization is demonstrated by the manner in which OPA claimed that treble damages were penal for some purposes and remedial for others and by the equally inconsistent or indecisive attitude of the courts on the subject. *Compare* Bowles v. Farmers Nat. Bank, 147 F.2d 425 (6th Cir. 1945) (treble damages held penal thus defeating Price Administrator's claim of survivorship), *with* Bowles v. Berard, 57 F. Supp. 94 (E.D. Wis. 1944) (treble damages held remedial thus defeating claim of privilege against self-incrimination and defense of double jeopardy) *and* Testa v. Katt, 330 U.S. 386 (1947) (state courts have jurisdiction to enforce treble damages, but the Court sidestepped the question of whether a treble damage suit involved a federal penalty which would presumably be unenforcible in state courts). For extensive survey of the conflicting decisions, see Oglebay, *Provability and Dischargeability of Judgments against Overcharging Merchants and Landlords under Emergency Price Control Act*, 21 J.N.A. REF. BANKR. 39 (1947).

Despite the inutility of this classification, the Internal Revenue Bureau based allowance of deduction of double damages under the Fair Labor Standards Act, 52 STAT. 1069 (1938), 29 U.S.C. 216(b) (1946), primarily on judicial determinations that these damages were remedial. I.T. 3762, 1945 CUM. BULL. 95. Since the label remedial has little or no real significance out of context, the cases relied upon should not have been decisive because the issues before the courts were entirely unrelated to taxation. Overnight Motor Co. v. Missel, 316 U.S. 572, 583 n. 24 (1942).

do. In *Rossman v. Commissioner*,[5] the second circuit abandoned this arbitrary assumption and permitted the deduction of a penalty paid to OPA under a compromise settlement.

The Rossman Corporation, a wholesale processor of textile goods, accepted without scrutiny the erroneous yardage figures of its subcontracting dyer and consequently overcharged its retail customers. Upon discovery of the mistake, the corporation immediately reported the violation to the OPA. The Administrator accepted tender of the overcharge as full settlement, and the corporation claimed the item as a deductible expense. The Commissioner of Internal Revenue disallowed the deduction, and his action was upheld by the Tax Court.[6]

Reversing the Tax Court, the second circuit held that an expense arising out of a violation of a regulatory act is deductible unless such an allowance would frustrate the "sharply defined" policy of the statute.[7] The court relied on *Commissioner v. Heininger*,[8] in which the Supreme Court allowed the deduction of legal expenses incurred by a taxpayer in his attempt to enjoin enforcement of a postal order revoking his mailing privileges. Even though the revocation order was based on the taxpayer's fraudulent use of the mails, the Court felt that permitting the deduction for attorney's fees would not frustrate the statutory policy of protecting the public against mail frauds.[9] The court in the *Rossman* case extended the *Heininger* rationale to penalties[10] and held that to allow the deduction of this overcharge assessment levied under the

---

5. 175 F.2d 711 (2d Cir. 1949).

6. 10 T.C. 468 (1948). Speaking for a bare majority Judge LeMire held that the court was bound by precedent. In separate dissenting opinions Judges Harlan and Opper reasoned that there was no public policy condemning petitioner's conduct—conduct which was unintentional and had little or no inflationary effect.

7. As an alternate holding, the court found that this payment was not a penalty at all but rather was equivalent to recovery of property by a sovereign similar to repossession of abandoned property. Rossman v. Commissioner, 175 F.2d 711, 712 (1949).

8. 320 U.S. 467 (1943), 57 HARV. L. REV. 109, 42 MICH. L. REV. 1143 (1944).

9. This policy is effectuated in two ways: (1) by revocation of mailing privileges through returning to the defrauder all proscribed postal matter stamped "Fraudulent" and by returning all money orders to the remitters. 17 STAT. 322 (1872), as amended, 39 U.S.C. § 259 (1946); 17 STAT. 323 (1872), as amended, 39 U.S.C. § 732 (1946); and (2) by the imposition of fines or imprisonment. 17 STAT. 323 (1872), as amended, 18 U.S.C. § 338 (1946). In this case only the former enforcement procedure was used; so no penal deterrent was involved.

10. In so doing the court disavowed a contrary interpretation by the fifth circuit in Commissioner v. Longhorn Portland Cement Co., 148 F.2d 276 (5th Cir. 1945), *cert. denied*, 326 U.S. 728 (1945). The fifth circuit interpreted the *Heininger* decision as allowing the deduction of all legal expenses incurred contesting the government's antitrust claim. But it refused deduction of penalty payments or settlements. *Id.* at 277, 278.

This holding seems the more probably correct interpretation of the *Heininger* opinion, which states that penalties are not deductible. Commissioner v. Heininger, 320 U.S. 467, 473. Moreover, the Bureau of Internal Revenue has consistently followed this interpretation. G.C.M. 24810, 1946-1 CUM. BULL. 55 (legal expenses in OPA suit); Greene Motor Co. v. Commissioner, 5 T.C. 314 (1945), *acq.*, 1945 CUM. BULL. 3 (legal expenses contesting penalty for tax deficiencies); G.C.M. 24377, 1944 CUM. BULL. 93 (legal expenses in antitrust suit).

Price Control Act would not hamper the fight to control inflation.[11] Since the official policy of OPA was to settle for the overcharge only if the seller had acted in good faith and had taken all practicable precautions,[12] the court felt that under these circumstances payment of the overcharge would never be significant in overall enforcement strategy.

By relating deductibility of a "penalty"[13] to the problem of law enforcement, the second circuit has shown a commendable imagination which other courts would do well to emulate. Equally commendable is the court's implicit elimination of the other arbitrary rule that damage payments to private persons are always deductible.[14] A distinction based on whether payments are made to private parties or public agencies has no relation to the policy of strengthening regulatory legislation. Substantial damage payments to private persons will frequently have the same deterrent effect as penalty payments to the government.[15] Payment of treble damages to consumers when price violations occur in retail trade, for example, should not be treated differently from payment to the government for the same misconduct when the Administrator has assumed the cause of action on behalf of the United States.[16]

11. See statutory statement of purposes, 56 STAT. 23 (1942), 50 U.S.C. § 901(a) (1946). See also SEN. REP. No. 931, 77th Cong, 2nd Sess. 21 (1942): "of all the consequences of war, except human slaughter, inflation is the most destructive."

12. The official policy after June 30, 1944 appears in OPA Manual 9-1601.02. The court here relied on a letter from Chester Bowles to Senator Wagner in April 1944 to indicate that this was also the approved policy in 1943 at the time of the Rossman settlement.

13. "The words 'penal' and 'penalty' have many different shades of meaning, and are in fact among the most elastic terms known to the law." Ward v. Rice, 29 F. Supp. 714, 715 (E.D. Pa. 1939).

The functional approach suggested by the court here is much more fruitful than reliance on mere semantics. In evaluating the place of a sanction in administering the policy of a regulation some classes of sanctions, such as parking fines, previously labeled penal, see note 3 *supra*, may appear too insignificant to warrant refusal of tax deduction while others considered remedial have a substantial deterrent effect and should remain taxable.

14. The implication is stronger when coupled with the earlier expression of disapproval of this unreasonable distinction by the second circuit in National Outdoor Advertising Bureau, Inc. v. Helvering, 89 F.2d 878, 881 (1937).

15. This is particularly important where enforcement by means of monetary sanction is implemented predominantly by private damage suits—as in the Fair Labor Standards Act, 52 STAT. 1060 (1938), 29 U.S.C. §§ 201-19 (1946), where, except for the rarely invoked criminal sanction for willful violation, penal enforcement takes the form of double damage suits by injured employees. 52 STAT. 1069 (1938), 29 U.S.C. § 216 (1946). This enforcement procedure under the Fair Labor Standards Act is a particularly strong deterrent weapon because employees can band together in class suits and thus command substantial damages. P-H WAGE HOUR SERV. ¶¶ 11,035-11,041.4 (1950).

16. This distinction is made by the Internal Revenue Bureau in I.T. 3627, 1943 CUM. BULL. 111.

Before 1944 the Administrator had no right of action against retail sellers; consequently deductions were allowed for those few voluntary payments to the government of the overcharge amount. I.T. 3630, 1943 CUM. BULL. 113. In 1944, however, the Administrator was empowered to institute a claim on behalf of the United States if the injured buyers failed to press charges within thirty days. 58 STAT. 640 (1944), 50 U.S.C.

Similarly, in the enforcement of wage and hour laws, guilty employers should not be allowed deductions merely because the damages go to the employees.[17]

Unfortunately, the court in the *Rossman* case failed to make a realistic application of its new rule.[18] The magnitude of the enforcement problem under statutes regulating business behavior makes it virtually impossible to uncover more than a small percentage of violations.[19] The problem is particularly acute where, as in the Price Control Act, there is a short statute of limitations[20] and where involved and prolonged investigations usually precede prosecution.[21] In this situation, agencies tend to select[22] for investigation and

§ 925(e) (1946), amending 56 STAT. 33 (1942). Thenceforward all payments to the United States were to extinguish the Administrator's cause of action, and tax deductibility depended solely upon whether the damages were paid to the government or to consumers.

17. The purpose of the Fair Labor Standards Act was to insure working men and women a fair day's pay. *See* Walling v. Snyder Min. Co., 66 F. Supp. 725, 731 (D. Minn. 1946). Since this policy is implemented primarily by private damage suits, see note 15 *supra,* enforcement would be far more effective if the deterrent effect of double damage judgments were not diminished by subsequent allowance of tax deductions.

The Internal Revenue Bureau has allowed deduction of these damages. I.T. 3762, 1945 CUM. BULL. 95. See note 4 *supra.*

18. The government brief relied on the line of cases which had ruled that the imposition of a penalty was an automatic mandate for denial of deduction. Consequently practical considerations relating to enforcement of regulatory statutes were not presented to the court.

19. The number of OPA investigators never exceeded 3500—approximately one per county. Comment, 57 YALE L.J. 1023, 1039 n.67. In 1944 OPA had to administer 502 regulations affecting three million different business establishments. The staff was so inadequate that most businesses were not even investigated. Memorandum to OPA Regional Administrators from Chester Bowles, May 24, 1944. Prosecution by injured purchasers was at best haphazard because of indifference, collusion or fear of economic reprisals. 10 OPA Q. REP. 62 (1944). Moreover, the complexity of the regulations frequently made it extremely difficult to educate potential complainants in detecting violations. Comment, 57 YALE L.J. 1023, 1039.

For recognition of inadequacy of investigating personnel in the Wage and Hour Division see Fleming v. Phipps, 35 F. Supp. 627, 630 (D. Md. 1940).

20. 56 STAT. 34 (1942), as amended, 50 U.S.C. § 925(e) (1946); OPA MANUAL 9–1600.07.

21. "Suits for treble damages generally involved even more exhaustive investigations than were necessary in the application of other types of sanctions. The reason for this was that in treble damage cases it was necessary to prove a large number of different transactions in order to make the amount of recovery sufficient to operate as an effective deterrent. . . . Investigations were often, but not always, made an appreciable time after the violation had occurred. Of course, it was not possible to determine until after a preliminary investigation had been made, whether or not a violation had occurred and, if so, what type of sanction should be applied. In treble damage cases a further investigation was normally made before filing suit, and this latter, more intensive investigation would consequently often take place a considerable time after the violations had occurred." Communication to YALE LAW JOURNAL from Thomas I. Emerson, formerly Deputy Administrator for Enforcement, OPA, and Fleming James, Jr., formerly Deputy Administrator for Litigation, OPA, Dec. 8, 1949, in Yale Law Library.

22. "Proper selection of cases is the key to effective enforcement. We do not want to and cannot police every transaction or even handle every violation that occurs. A really

prosecution those cases most likely to have a maximum deterrent effect on subsequent violations.[23]

Any rule which reduces the ultimate cost of non-compliance will tend to defeat the deterrent purpose of selective enforcement.[24] To permit the deduction of a penalty merely because the violator didn't mean to do it would hardly encourage positive steps to comply.[25] But the effect of a standing rule, adopted in the *Rossman* case, that a deduction will be permitted on an additional showing of "due care" is less certain. Probably most businessmen would consider "due care" as an "out" rather easy to meet, and would have little incentive to take extensive precautions if a tax deduction were so readily available. On the other hand, businessmen will not necessarily make additional efforts to comply merely because a tax deduction is forbidden. Extensive precautions cost money, and if "due care" were no ground for deductibility some individuals might decide to skip the precautions and take the chance that they would not be discovered. Given this uncertainty, a court might reasonably yield to its sympathy for a poor soul confused by the maze of federal regulations[26] and allow a tax deduction as recompense for his diligence.

Even if sympathy for the "innocent" transgressor is well-founded, however, there are other reasons for not letting it govern deductibility. Settle-

---

effective enforcement program—as distinguished from haphazard and ineffectual floundering in the enforcement field—starts with the careful and intelligent selection of cases." Memorandum to OPA Regional Administrators from Chester Bowles, Jan. 31, 1945.

23. See Schwench, *The Administrative Crime, Its Creation and Punishment by Administrative Agencies,* 42 MICH. L. REV. 51, 85 (1943); GELLHORN, ADMINISTRATIVE LAW, CASES AND COMMENTS 327–39 (2d ed. 1947).

24. If the tax were 100%, the effect of allowing the deduction would be to relieve the taxpayer of the entire burden of the sanction, and the same is true *pro tanto* where the rate is lower. Since OPA penalties were levied in times of high profits and proportionately even higher corporate taxation, the burden of the penalty would have been relatively minimal if deductions were granted. See particularly the Excess Profits Tax, 54 STAT. 975 (1940), as amended, 26 U.S.C. §§710–83 (1940), repealed, 59 STAT. 568 (1945). Moreover, complex regulations, coming usually in wartime, generally are accompanied by high taxes. Particularly under these conditions would the tax leniency here suggested hamper effective penal enforcement.

Even in normal times, when the maximum corporate income tax is 38%, INT. REV. CODE §§ 13(b)(1) and 15(b)(3), allowance of deductions would materially lessen the deterrent effect of the sanction on tax-wise businessmen.

25. "Violations arising out of carelessness or indifference may well be more important in some situations than wilful violations." Memorandum to OPA Regional Administrators from Chester Bowles, Jan. 31, 1945.

It is for this reason as well as for administrative convenience that absolute liability is often imposed for violation of regulatory acts. See, *e.g.*, Fontes v. Porter, 156 F.2d 956 (9th Cir. 1946) (good faith and due care no defense to price violation); Chicago, B. & Q. Ry. v. United States, 220 U.S. 559 (1911) (reasonable care no defense under Safety Appliance Acts). See, for further examples, Sayre, *Public Welfare Offenses,* 33 COL. L. REV. 55, 87 (1933).

26. Rossman v. Commissioner, 75 F.2d 711, 714 (2d Cir. 1949).

ment by an agency does not necessarily mean that the violation was unavoidable.[27] Proof of bad faith or of want of due care is always difficult because the evidence is peculiarly available to the defendant.[28] And even though the agency might require detailed proof of good faith and due care before settlement for the amount of the overcharge, thus putting the burden on the defendant, normally agencies such as OPA have neither sufficient time nor personnel to investigate and challenge doubtful defenses of this kind without dissipating too much of their enforcement potential on one offender. OPA field officers settled a disproportionately large number of cases—over 70%—for the amount of the overcharge despite doubt concerning the sufficiency of the violator's attempts to comply.[29] If settlement cases were to have the tax significance here adopted by the court, and if agencies could not otherwise convince the courts of the undesirability of these deductions, they would be compelled to prosecute to judgment all penalty claims where allowance of a deduction would hinder effective enforcement. As a result, either the scope of regulatory coverage would be drastically curtailed or the costs of administration appreciably increased.

---

27. The facts of the *Rossman* case were peculiarly favorable to the taxpayer in that Mr. Rossman's voluntary disclosure of his company's violation and his express willingness to rectify the mistake in any way possible were certainly acts of "good citizenship." Rossman v. Commissioner, 10 T.C. 468, 474–6 (1948). The equities favoring defendant Rossman are more fully spelled out in Gelfand, *Payments to OPA*, 27 TAXES 961 (1949). But Rossman, himself, had participated in preparing the regulations which his company violated, Rossman v. Commissioner, *supra*, at 470, so that he could less justifiably claim confusion caused by complexity of the regulations. The Tax Court, indeed, found that "it is not too clear from the evidence that the overcharges might not have been avoided if the petitioner had adopted more appropriate accounting measures." *Id.* at 472. It is also noteworthy that the "unavoidable" violations which occasioned an *amicus* brief involved overcharges of over two million dollars. Brief for Pacific Mills as *amicus curiae*, Rossman v. Commissioner, 175 F.2d 711 (2d Cir. 1949).

28. The duty of businessmen to take all practicable precautions was defined very strictly by OPA. For example, "Where violations [were] committed by employees, this [standard of care was] not met by the employer unless he took every practicable step to: (1) Select and instruct employees, (2) install a system for their guidance, (3) check up on the operation of this system and to detect and report violations, and (4) discipline and, where indicated, discharge employees who violated." OPA MANUAL 9–1601.04. The difficulties of checking on compliance with such requirements are apparent.

29. Over 70% of the Administrator's suits for treble damages were settled for the overcharge or less. OPA Enforcement Charts, Series A, Chart VIII (1945). This enforcement laxity was criticized by the Deputy Administer for Enforcement. Memorandum to OPA Field Officers from Thomas I. Emerson, March 19, 1945. But "the enormous volume of work and the need for concentrating on the most significant cases compelled settlement of cases at single the amount of the overcharge even though the investigation did not disclose the requisite good faith and precautions. The policy in the various offices differed somewhat in this matter. But all offices were forced to be more lenient than the official instructions required because of the pressure of work." Communication from Thomas I. Emerson and Fleming James, Jr., *supra* note 21.

Similarly, voluntary disclosure of violations in no way proves that the offender took all practicable precautions.[30] Discovery of infractions by the violator himself may indicate instead that diligent compliance measures would have prevented their occurence. Nor does voluntary disclosure necessarily mean good faith. The violator may have confessed his sin only because he anticipated prosecution and hoped to get a settlement for less than the full statutory penalty.[31] Although preferential tax treatment, by encouraging voluntary reports, would lighten the enforcement load of an agency, voluntary payment of penalties for illegal acts is not the kind of compliance sought. Agencies are not interested in locking the stable after the horse has been stolen.[32] They are primarily interested in seeing to it that illegal acts are not committed in the first place.

A mechanical distinction between private damages and public penalties is a poor guide to their deductibility for tax purposes and is ripe for discard. But the new rule proposed in the *Rossman* case should not be used to extend deductibility.[33] Instead, it should become the basis for denying deductions for any money sanction designated by the appropriate administrative agency to be a substantial deterrent, whether payable to private persons or the government. Since the agency is most familiar with practical enforcement problems, it is in the best position to determine how important a particular sanction may be. Moreover, once the classification has been made, the burden of relitigating good faith and due care issues in tax actions would be removed. This may be harsh for those who have tried hard to avoid violations, but individual hardship is often outweighed by the importance of effectively enforcing regulations passed for the general welfare.

---

30. The element of voluntary disclosure was not considered significant by the court in the *Rossman* case.

31. Leniency by the agency would seem adequate incentive for the cooperative businessman. Moreover the agency is in the best position to judge whether the disclosure is in complete good faith and, therefore, to determine the appropriate reward for voluntary disclosure in each individual case.

32. For example, in the instant case the inflationary effect of the overcharge had already been irrevocably injected into the economy, having been reflected in the prices of all wholesalers and manufacturers who purchased from the Rossman Company.

33. The handicaps to enforcement which result from allowance of penalty deductions might conceivably be eliminated either by agency concentration on non-deductible criminal fines or by statutory augmentation of penalty amounts to compensate for tax deduction. But criminal sanctions are generally available only against the willful offender. *E.g.* Fair Labor Standards Act, 52 STAT. 1069 (1938), 29 U.S.C. § 216(a) (1946), and Price Control Act, 56 STAT. 33 (1942), as amended, 50 U.S.C. 925(b) (1946). Careless violations, which are far more numerous and possibly of equal importance, would remain unchecked. An overall compensating increase in the amounts of the penalties would be undesirable because it would make the effective penal burden dependent on the violator's income tax bracket.