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Consolidation and Codification of the Internal-Revenue Laws

HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

SEVENTY-SIXTH CONGRESS

FIRST SESSION

ON

H. R. 2762

AN ACT TO CONSOLIDATE AND CODIFY THE INTERNAL-
REVENUE LAWS OF THE UNITED STATES

JANUARY 30, 1939

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CONSOLIDATION AND CODIFICATION OF THE INTERNAL-REVENUE LAWS

MONDAY, JANUARY 30, 1939

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met in executive session, pursuant to call, at 10:30 a. m. in room 312, Senate Office Building, Senator Pat Harrison (chairman) presiding.

The CHAIRMAN. The House passed a bill (H. R. 2762) a few days ago, an act to consolidate and codify the internal revenue laws of the United States. The staff of the Joint Committee on Internal Revenue Taxation, the Treasury Department, and the Department of Justice have been working on this matter a good while. The Joint Committee on Internal Revenue Taxation discussed the matter at its last meeting, so the meeting this morning was called for the purpose of considering this House Bill.

Mr. Stam, will you explain this matter briefly to us?

STATEMENT OF COLIN F. STAM, CHIEF OF STAFF, JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

Mr. STAM. Mr. Chairman and gentlemen of the Committee, this code is the result of about 10 years' work by the staff of the Joint Committee on Taxation with the cooperation of the Treasury Department and the Department of Justice. We started this code in 1930, and at that time our instructions were to collect all the internal-revenue laws and eliminate from the internal-revenue laws so collected those expressly repealed. Then we collected all the internal-revenue laws which were temporary in character or which have become obsolete. We prepared two volumes of the obsolete and the temporary laws.

After we did that, then we had conferences with the Treasury Department and other departments, for the purpose of being sure that nothing was omitted from the code. Then in 1930 we published the first edition of the code. That was published for the purpose of inviting scrutiny to see whether there were any errors. In 1932 we published a new edition of this code. That contained the Revenue Act of 1932.

In 1933 the Committee on Revision of Laws of the House accepted in its entirety this title that we published and substituted it for title 26 of the United States Code. So our title has been in the United States Code since 1933.

Last year, at the request of the chairman of the Joint Committee on Internal Revenue Taxation, and also at the request of Dr. Magill, who was then Under Secretary of the Treasury, we engaged in a further bringing of this code up to date to include legislation passed since its first publication.

A subcommittee of the Committee on Ways and Means at that time voted to have the edition we published last year enacted into absolute law at that time. The difficulty, though, about doing it at that time was that the Revenue Act of 1938 was in the mill and it was thought best to let the matter go over until this session and incorporate the 1938 act into the code, which we have done. The House has just passed this code with the incorporation of the 1938 revenue law in it.

The main features about the code are that it does not change the existing law at all. It does not interfere with any pending litigation of any kind, it merely states the existing law that you would apply today if you had a tax transaction. If you wanted to find out your income-tax liability, say, for the year 1939, you would find the law right in the code.

Senator WALSH. Did the joint committee of the House and Senate examine the code for the purpose of determining themselves whether to make any change or not?

Mr. STAM. The joint committee took this matter up—I think you were out when Senator Harrison spoke about that—at the last meeting and discussed it at that time.

The CHAIRMAN. We did not go, Senator, into all the ramifications in regard to this codification; we had to leave that to the experts on the staff, because it is quite a voluminous document as you see, but the staff of the joint committee has collaborated with the experts of the Treasury and with the experts of the Department of Justice. We have got to rely upon them, and they state to us that the work has been done very carefully and that they feel it is correct.

Senator WALSH. The point I wanted to make was that the officials of the Treasury have made the comparisons between the existing law and this code, and they all are agreed that there are no changes in the fundamental law.

Mr. STAM. That is right. This has been passed on and agreed to by all of the parties reviewing it. Of course, the code is prospective in its operation, it is not retroactive, and therefore if any errors should develop—we have taken every precaution to prevent any errors from appearing in the code, but if any errors should appear, the Congress can correct them by legislation.

The CHAIRMAN. Mr. Stam, explain to us about the pending cases in the courts to which you alluded.

Mr. STAM. Well, if somebody has a suit pending in the court in regard to an internal-revenue matter, that suit will continue under the Statutes at Large, as they exist. The code does not interfere with those suits. It is only when the suit is brought after the enactment of the act that they are compelled to use the code.

Senator WALSH. And after a taxpayer takes action on the law as set forth in this code.

Mr. STAM. That is right.

Senator VANDENBERG. You said something about eliminating obsolete sections of the law. Will you explain what you meant by that?

Mr. STAM. The revised statutes were enacted in 1873—that has been the last time we have had any code which can be recognized as absolute law. Since that time there have been published about 35 additional volumes of the Statutes at Large. The internal-revenue laws are found in appropriation acts and in all sorts of general acts, and they all had to be collected. Some of them would not apply to any of the current taxes. That is what I mean by the obsolete matters that we have eliminated.

The CHAIRMAN. Give us an illustration, Mr. Stam.

Mr. STAM. I think they used to have a provision in the 1808 act about a document could not be admitted as evidence in court until it bore an internal revenue stamp showing that the tax had been paid. Now that section has never been specifically repealed, although the Supreme Court in a case handed down about 1918, I believe, held that this provision had no application to the present stamp tax laws. Therefore the provision was obsolete and could not be applied any longer, you see, to current taxes. We ran across a number of situations like that.

Senator WALSH. Are these obsolete laws just dropped out of the codification or are they repealed?

Mr. STAM. They are merely dropped from the codification. In the enacting clause of this code, to take care of the possibility, which I think is very remote, because we have gone through the thing very carefully, but to take care of the possibility that some old law might be omitted we only repeal those provisions which are codified in the code itself. Those that are not in the code are not repealed, and those that do not relate exclusively to internal revenue are not repealed.

Senator WALSH. But you have included everything in the code that should be in there?

Mr. STAM. We certainly have gone through the laws and made every effort to do so.

The CHAIRMAN. Is there something else now you desire to tell us? The House voted practically unanimously for this bill, did it not?

Mr. STAM. The Ways and Means Committee reported the code out unanimously; there was no dissent. When it got on the floor there were 16 votes against.

Senator VANDENBERG. On what theory? What was the complaint?

Mr. STAM. The only theory that was advanced was the same theory that was advanced when the revised statutes of 1873 were enacted. Somebody had the idea that there might be a possibility of error, and of course, as I say, if there is, we can correct it by legislation. If we do not make this code absolute law we will still let this mass of internal revenue legislation accumulate as it has since 1873, and it will make it very difficult for anybody to tell exactly what the law is.

The CHAIRMAN. One of the objects is this—simplification, so that lawyers and people can understand it better and handle it more efficiently.

Senator VANDENBERG. Lawyers, not people.

Senator WALSH. It is in the public interest, in other words.

Mr. STAM. One of the main features about this code is the arrangement. We have gone through every chapter and we have arranged the tax provisions right at the beginning, so you can open the chapter and immediately tell what the rate of taxes is, and you can immediately tell who the taxpayer is who is liable for the taxes, who files the return.

All those things are grouped together at the beginning of the chapter.

The CHAIRMAN. The last time the internal revenue acts were codified was in 1873?

Mr. STAM. The revised statutes of 1873.

Senator GEORGE. That was a general revision of all statutes.

The CHAIRMAN. Was that a general revision of all statutes?

Mr. STAM. Yes, Senator.

The CHAIRMAN. Of course, this applies only to the revenue laws.

Mr. STAM. This applies only to the revenue laws, and only to provisions relating exclusively to internal revenue.

The CHAIRMAN. Had that ever been done before?

Mr. STAM. That has never been done before. The idea was that if you could get one of these titles enacted instead of bringing up a whole body of Federal laws there would be much less chance for error than trying to come out with the whole body of Federal laws, as was done in 1924 with the United States Code.

Senator GEORGE. Any black-letter type here is not part of the act under the enacting clause?

Mr. STAM. The cross-references are in the small type.

Senator GEORGE. You know what I mean by black letter. Sometimes, in arranging the code, something is put at the top to explain the thing.

Mr. STAM. We have nothing of that sort in this code.

Senator GEORGE. If you have any in here, they are not made part of the law?

Mr. STAM. That is right.

Senator GEORGE. By regrouping these statutes you are guarding against any legislative intent or purpose by that act to change the existing law?

Mr. STAM. That is right.

Senator GEORGE. While this purports to be a codification of all the revenue acts by the clause—the general laws and parts of such other special laws, and so forth, as relate exclusively to internal revenue matters—you have safeguarded any possible omission by providing in this adopting act that it is applicable to only the laws and parts of laws codified herein?

Mr. STAM. That is right.

Senator GEORGE. So that any omitted law would still remain the law; would it not?

Mr. STAM. That is true.

Senator GEORGE. I think that ought to appear in the record. If it were accidentally or inadvertently omitted it would still be the law.

Mr. STAM. We can put that in the committee report.

The CHAIRMAN. The Under Secretary of the Treasury, Mr. Hanes, is here. Will you give us the viewpoint of the Treasury concerning this matter, Mr. Hanes?

STATEMENT OF HON. JOHN W. HANES, UNDER SECRETARY OF THE TREASURY, TREASURY DEPARTMENT

Mr. HANES. Mr. Chairman, and gentlemen of the committee, I think, Mr. Chairman, the position of the Treasury concerning the enactment of the Internal Revenue Code is about as follows: Some time in July, just after I had gone to work for the Treasury, Mr.

Magill, who was then Under Secretary of the Treasury, talked to me about the proposed enactment of the Internal Revenue Code. I am not attempting to speak for Mr. Magill, but I do think it is fair to say that Mr. Magill, as a lawyer, recognized the dangers inherent in such codification, but that the practical advantages to be gained thereby were such as to weigh heavily in favor of its enactment. Secretary Morgenthau and I are in agreement that the codification of the internal revenue laws cannot fail to be useful since it puts into readily accessible and convenient form a multitude of diverse and scattered enactments, which would be helpful to public officials, lawyers, accountants, and taxpayers alike. It is fair to say to the committee, however, that there exists some difference of opinion in the legal staff of the Treasury. Mr. Oliphant, just prior to his sad and untimely death, took the viewpoint which I think could be stated about as follows: That substantially all the useful and practical objectives which I have mentioned above would be attained by the enactment of this code not as an absolute law but as prima facie evidence of the law, and at the same time not be inviting the danger of numerous errors which have characterized previous attempts at comprehensive codification. I want to place before the committee this opinion for its consideration.

An early objection, I have been informed, was that the enactment of the code would result in disadvantages to the Department of Internal Revenue on account of cases now before the courts on previous tax laws. This objection, I am advised by Mr. Stam, has been eliminated. So, as far as I can learn, the only remaining objection is on account of the fallibility of the most expert draftsmen and the inevitability of errors in any work as complicated as that which is now before the committee. For the information of the committee I wish to say that counsel for the Joint Committee of Congress on Internal Revenue Taxation has been most cooperative with counsel for the Treasury. Our legal staff has submitted three separate reports of errors found and it is my understanding that corrections have been made accordingly in the draft now before you.

The CHAIRMAN. Is that true, Mr. Stam, that the corrections have been made?

Mr. STAM. Corrections have been made and agreements reached on all points.

Mr. HANES. Finally I would state the Treasury's position to be that if your committee, balancing all the practical conveniences against such objections as have been raised from time to time, recommends to the Congress the enactment of the internal revenue code into absolute law the Treasury will have no objection.

Senator VANDENBERG. You referred to the fact that there were numerous errors in previous codifications. That experience ought to mean something. Were there numerous errors in this codification?

Mr. STAM. Can I answer you there?

Senator VANDENBERG. Yes.

Mr. STAM. When the Revised Statutes were enacted in 1873 they got through three supplemental acts correcting certain errors in the Revised Statutes, and of course there were errors discovered, but they were corrected by subsequent legislation, and of course the Revised Statutes were the Revised Statutes of the entire body of Federal law, while this code merely codifies the internal revenue laws,

so the danger of error in the case of the internal revenue laws is not quite as great as in the case of codifying all the Federal laws.

Senator GEORGE. How many volumes of the original Revised Statutes?

Mr. STAM. There were 17 volumes of the Statutes at Large incorporated into the one volume of the Revised Statutes published in 1873. Of course, if we had not had the Revised Statutes, even conceding the Revised Statutes had errors, we would have been compelled to go back to the days of George Washington even today to find out what our laws are.

Senator VANDENBERG. What would you say in regard to Mr. Oliphant's suggestion, instead of making this an absolute law that it be made the prima facie evidence of the law?

Mr. STAM. Making a code prima facie law has certain disadvantages. For example, if you have a law case in court you cannot go into court and absolutely rely on the code, you have got to examine all the statutes which are cited to support the language in the code, and therefore you have to make the search of all the Statutes at Large to determine what the law is. Now this code gives us a new starting point beginning with January 1, 1939, so that you only have to look up the law on that date, plus the subsequent amendments made by subsequent legislation.

Senator RADCLIFFE. Would it be conclusive? I understand if there are any statutes left out by error they would still be in force. If that is the case, would it all be prima facie?

Mr. STAM. Only as to the omitted statutes.

Senator RADCLIFFE. I mean do you know whether there is one or not?

Mr. STAM. Our research would indicate there are no omissions.

Senator RADCLIFFE. I can see where it would be prima facie, but at the same time if you can still introduce evidence to show that statutes are in existence that you have not included here that would apply in every instance, theoretically speaking.

Mr. STAM. In every code that has been enacted, as far as we have been able to determine, the position has always been that if there is an omission of any statute—in other words, if the statute is not in the code—then you can come forward and show the statute, but that does not prevent the code from being made absolute law. The advantage of making the code absolute law is that the Congress can amend it with subsequent legislation. In other words, you take our income-tax law—suppose we put through income-tax legislation this year, instead of rewriting our entire income-tax title, like we have done many times and brought before the committee a whole body of law which has not been changed for some time except in some few respects, we can just amend a particular section of the income-tax title that we want to amend without opening up the entire income-tax title. That is one of the great advantages of having the code enacted into absolute law.

The CHAIRMAN. May I ask you, Mr. Hanes, what would be your opinion if this were made prima facie evidence, as was suggested? Which would you prefer, prima facie evidence or absolute law?

Mr. HANES. Practically speaking, Senator, I should say it would be better to have it enacted into absolute law, because it seems to me there would be more confusion after this thing was enacted as prima

facis evidence of the law than it is at the present time, and you know there is plenty of confusion at the present time.

The CHAIRMAN. Is there anything else you desire to say?

Mr. HANES. There is nothing else that we have, sir.

The CHAIRMAN. Mr. Morris. Mr. Morris represents the Department of Justice concerning this matter.

STATEMENT OF HON. JAMES W. MORRIS, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. MORRIS. Mr. Chairman, the gentlemen of the committee, I have been asked to state the view of the Department of Justice on the proposed codification. Being Assistant Attorney General in charge of the Tax Division, we naturally are very much interested in what seems to make for the simplicity and clarity of the statement of the law.

Our concern primarily, as you gentlemen can well understand, is with the procedural provisions and that part of the code which relates to the litigation of cases. We feel, as I am sure you gentlemen do, that the Treasury Department is the one charged primarily with the matters of substantive statutory enactment.

I was asked to state our view in this matter when the subcommittee had prepared this report. I think I can state our view, if I may, by reading the letter that I wrote to Mr. Doughton, then chairman of the joint committee, under date of January 18, 1938. I wrote to Mr. Doughton as follows:

MY DEAR CONGRESSMAN DOUGHTON: I am in receipt of your letter of January 15, 1938, requesting the views of this office relative to the proposed codification of internal-revenue laws and the enactment of such codification into law. In your letter you quote the statement contained in the report of the subcommittee of the Committee on Ways and Means of January 14, 1930, dealing with this proposal.

The Tax Division of the Department of Justice, in the performance of its function of handling revenue litigation, has been impressed with the need of a codification of the revenues laws which will be recognized as the law rather than as being merely prima facie evidence thereof. We believe that much confusion exists by reason of the number of revenue acts, containing in many instances the same basic provisions, to which reference must be made in the handling of cases arising under the various acts. This confusion constitutes a burden for courts and counsel alike.

Also, several of these statutory provisions were amended by Executive order. Since the changes thus made have not appeared on the face of the statutes, it has been necessary to refer to the Executive order to ascertain the nature and extent of these changes. I am glad to see that this situation has been taken care of. It will also be helpful and lessen confusion.

It is the opinion of this office that the enactment of a codification of the revenue statutes will be a definite step toward clarity, certainty, and simplicity. Such a codification will bring the substantive and procedural provisions together and will be most helpful.

In doing this work I feel that the staff of the joint committee has made a valuable contribution to the tax law which will be a substantial aid to this division in the handling of litigation involving Federal revenue.

Very truly yours,

JAMES W. MORRIS,
Assistant Attorney General.

Senator VANDENBERG. You referred several times to Executive orders.

Mr. MORRIS. I should like to explain that, if I may, Senator. You gentlemen recall that under the provisions of the law that authorized

the President to make certain consolidations and transfers of work in the executive departments there was an Executive order made by the President which, according to the terms of the act that authorized it, had to be and was submitted to Congress. It was not to become effective until it had been so submitted, and had awaited any possible congressional action that the Congress might, in its judgment, have taken. This had the effect of transferring, for instance, the handling of tax litigation, from the method that was previously used in handling it, by the Treasury Department to the Department of Justice. That was, you may understand, the occasion for the creation in the Department of Justice of the Tax Division. That work theretofore had been handled by both Departments and in several divisions of each. Now in order that the committee may not be under any misapprehension about the matter that Mr. Hanes has alluded to, it might be worth while for me to read a letter that I sent to Mr. Oliphant under date of February 9, 1938.

Senator VANDENBERG. Before you leave the Executive order business, does this codification put into permanent statute law any mere Executive orders issued by the President?

Mr. MORRIS. I do not think that is a mere Executive order. I think that has been sanctioned, it was authorized by and sanctioned by the Congress. I might say this, because I noticed in the debates on the floor of the House some point was made of that, that it might affect pending litigations relating to any Executive order. I am, frankly, not advised of any pending litigation that it does affect, but I would not undertake to say that there is not any. I consider the saving clause here as to pending litigation would be ample protection in respect to that. Can you supplement anything to that, Mr. Stam?

Mr. STAM. I might say as to that, Senator, these Executive orders were only those Executive orders which became law by act of Congress. I mean the law provided that if Congress did not change these orders within a certain time, they became law.

Senator VANDENBERG. This does not mean the multitude of Executive orders that we know of under the emergency set-up?

Mr. MORRIS. No; it only alludes to those kind of Executive orders that were made pursuant to act of Congress and were submitted to the Congress for its approval or disapproval, if they chose to act.

Senator BAILEY. Mr. Chairman, would you mind an interruption here in order that I may make a suggestion?

The CHAIRMAN. Certainly, Senator.

Senator BAILEY. You turn here to the repeal and savings provisions in section 4, you say "except as provided in section 5." Now turning to section 5, I propose to consider an amendment at the end of section 5 in these words:

and if there be conflict the original act shall be in effect notwithstanding this act and shall be controlling; and any act not brought forward and it shall have been shown that it is applicable shall be in full force and effect notwithstanding it does not appear in this codification.

Now, that would allow for all errors that you might make, and all the omissions, and yet it would not interfere with that code. What do you say about that?

Mr. MORRIS. My observation on that, Senator, would be this; it would do just as you say; it would obviate any possibility of any inadvertent error, and having that virtue it would also have the vice of not being a codification.

Senator BAILEY. Yes; it would be a codification.

Mr. MORRIS. Sir?

Senator BAILEY. I have been through codifications before. In any codification you are liable to make omissions.

Mr. MORRIS. There is no doubt about that.

Senator BAILEY. You are liable to get your phrases wrong, you are liable to get your matter a little mixed, some conflict in transferring from one section to another. All this would do would be to put the lawyers to the point of making an inquiry, in a close case, as to the former act. I think that is the rule. The lawyer is put on his guard.

Mr. STAM. It would force the lawyer to go back and investigate all the statutes to see what the original text was. That is what we are trying to eliminate. We are trying to get a new starting point, beginning with the effective date of the code.

Senator BAILEY. If you do not do what I am suggesting then we are put to the point of running the risk of allowing the Treasury and our experts to put a code together which amounts to primary legislation. If we are going to do that, I ask that we have a committee appointed to review the whole volume and check it, and that is a year's job. This little saving clause would not do you much harm. It might raise some questions in the courts. If the question is raised, Congress would be out of session more than 7 months every year, not likely more than 6, where we could correct it. I just offer it as a suggestion in your discussion.

Mr. MORRIS. My comment on that would be this: I feel that there has been a very diligent effort made to detect any possible variances by men that are extremely well qualified to make that survey and study. I speak now of the joint committee, a committee of Congress and its staff. It is reinforced by the very careful consideration and examination by attorneys in the Treasury Department, and it has been supplemented by examination with respect to points involving litigation or procedure by our Department. Now I would not for 1 minute be so naive as to say that precluded any possibility of inadvertent error. I do think it has been reduced to a reasonable minimum, and possibly any discrepancy that might exist would not be developed by further examination or without litigation that might arise. Experience shows us that there might possibly be some change, but I do think, and of course I am rather timorous in my suggestion as to what ought to be done because you gentlemen are far more competent to say than I am, I do think that there is an advantage in having a new point of departure from which any changes that, in your judgment, should be made, or corrections, if you please, can be made, and I understood that to be the aim and objective of this effort.

Senator CLARK. Granted that what you say is true, that there has been a diligent effort made to codify the law by extremely competent committees, nevertheless so far as this committee of Congress is concerned, and as far as Congress itself is concerned, unless such a saving clause as Senator Bailey suggests be put in we are simply taking, sight unseen, the efforts of this codification here.

Mr. MORRIS. I do not understand it that way, Senator. I rather look upon the work of the joint committee on taxation as being the agency and instrumentality of your committee. That is the view I have taken of it.

Senator BAILEY. Our rule has been to refer these matters to the committee and then read them section by section in order that each

member may pass on each section. In this instance it is not proposed that we do that, it is not insisted that we shall, but it is important that we shall not permit, by inadvertence, any act to be omitted. That is all I am driving at.

Senator GEORGE. If I may make a suggestion, I do not think there would be any omission of any act, or any provision of the revenue laws would be repealed or affected by the adoption of this code, so far as the actual omissions are concerned.

Mr. STAM. It is only repealed to the extent included therein.

Senator GEORGE. I think that would be the rule anyway. It generally has been the rule applied by the courts to codification of the law, even under enacting statutes similar to this or stronger than this, but with respect to changes in codifications, as Senator Bailey has pointed out there in his suggested amendment, that would not be the rule, of course.

Senator BAILEY. Senator, observe section 4 [reading]:

In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this act.

Mr. STAM. "Codified herein."

Senator BAILEY. "Of laws codified herein."

Mr. STAM. That is right.

Senator BAILEY. You may codify some law we pass and inadvertently it would not be the same phrase, but the law would be codified nevertheless.

Mr. STAM. Parts of the law.

Senator BAILEY. You might codify a law or parts of the law and leave out a word that was very important. You might leave out a figure that was very important. It would be repealed under that section 4 which I have just read. You agree with me about that, don't you?

Mr. MORRIS. Yes; I do.

Mr. STAM. If there is an error I think it is better to absolutely rely on the code and then have Congress, by a subsequent act, correct the mistake. I do not think there would be any trouble getting the Congress to correct an error.

Senator BAILEY. Congress might correct a mistake, might make it retroactive, and there would be some embarrassment. The liability would accrue after January 2, and under this code the right would arise upon this codification not upon the former law if it was left out or if it was improperly printed.

Mr. STAM. I might make this statement on that point, that that was the same objection that was made when the revised statutes were enacted in 1873, and it was pointed out by Senator Carpenter on the floor of the Senate at that time, that there might be errors, as there were subsequently shown to be, in those revised statutes, but he pointed out that that can be corrected easily enough by legislation.

Senator BAILEY. But then you would have to make the correction retroactive.

Mr. STAM. That is right; but the great benefit of enacting the code is that it gives us a starting point beyond which we do not have to go; we can rely on it from that time as the law. Now, if a mistake did develop, Congress could correct that by subsequent legislation, and it

seems to me it would be much better to have that done than to still have the person go back and wade all through the old statutes to find out whether this particular codification had changed the law.

Senator BAILEY. Let us get the picture in mind. My right arises on January 2 in a tax matter and I go into court after Congress adjourns, say, in July, then the court has to pass upon the right and determine the law on the basis of the code then in effect, and the Congress meets the following January; what becomes of the lawsuit in those circumstances?

Mr. MORRIS. Certainly Congress would be competent, if it felt an injustice or inequity had been done because of an inadvertent change, it could give relief to the taxpayer.

Senator BAILEY. Suppose we proceed to try the case in October, in contemplation of the action of the Congress, we would not know what the Congress is going to do. That is just your point. You would suspend your suit until you came to the session of the Congress. Then say the Congress took action, you go on with the suit but you go on with the new page. Meanwhile I, as the litigant, would have lost my time, probably have gone to a great deal of expenses.

Mr. MORRIS. I do not think that situation would eventuate, Senator. I think if, in the course of a piece of legislation, it should develop, as it conceivably could, though I think everything has been done to guard against it, if it should develop that the state of the law prior to this codification was different and thereby some equity of the taxpayer had been wronged, and if that was made evident in the course of the trial, I have no doubt that a taxpayer in that situation would have a very sympathetic hearing on the part of the Congress to give him some relief in that particular instance because of that situation, and I believe that the occasion for that sort of thing would be much less likely than is apprehended.

Senator BAILEY. It might be unfavorable to the Government.

Mr. MORRIS. Conceivably it might, but I do not think the hazard of that would be so great as to stand in the way of eliminating now, mind you, Senator, a confusion that does now exist, that is somewhat difficult to envisage, and by reason of which I have no doubt a taxpayer, and sometimes the Government perhaps suffers—situations that ought not to be.

On my desk is a compilation of statutes going back, back, back. That compilation is not available, so far as I know, to people outside of the Government. We have worked up, photostated material and brought about compilations, and we have to study the meaning, and so forth, of all of those things. Now I have no doubt that taxpayers, time and again, are at a loss to know what the applicable provisions are. This would remedy that. Nothing can be said to be more in the interest of taxpayers and the Government, and one cannot really make a distinction here, because the interest of the Government is that the taxpayers be treated right, but I think it would make for a clarity that would serve the ends of justice.

Senator BAILEY. I agree with you on that.

Mr. MORRIS. What little difficulties might arise—and far be it from me to say that they will not—could be corrected with much less burden on anybody than to leave the thing in a status where it lacks the certainty that this would have.

Senator BAILEY. The arguments for codification are overwhelming. I am thoroughly agreed on it. I am enthusiastically for the codification.

Mr. MORRIS. I rather think that a saving clause that would make it dependent upon a search of all of those things would defeat the value of the codification. Now, I may be wrong.

Senator BAILEY. Let me discuss that with you a moment. The codification would serve a very great purpose under any circumstances and generally it would prevail. My little amendment here would just provide for those exceptional cases in which there was question.

Mr. MORRIS. But there would have to be made a search in every instance to determine whether there was a question.

Senator BAILEY. You are a lawyer, are you?

Mr. MORRIS. I am a lawyer; yes, sir. I am Assistant Attorney General.

Senator BAILEY. Lawyers have to make a search in every instance anyhow.

Mr. MORRIS. Yes; we do.

Senator BAILEY. I have searched tax laws in my time, time after time, to find out what the statute of limitations was, and I do not think anybody in my day when I was practicing, could tell what the statute of limitations was.

Mr. MORRIS. That is it, Senator. We are trying now to go substantially along the way that the Supreme Court has gone recently in a new procedure. We are trying in every way we properly can do it to reduce to a minimum that unnecessary burden, not because of consideration for the lawyers, but because we think it is high time that litigation function on a basis that does not offer too much unnecessary delay and complexity.

Mr. STAM. Mr. Morris, you do not have to go behind the Revised Statutes of 1873. In other words because the Revised Statutes are absolute law you do not have to look at the act of 1812 and the act of 1814. That is what is going to happen here. You will not have to go back of the date that this code is effective to find out what the law is.

Mr. MORRIS. On this very point may I read the letter I wrote to Mr. Oliphant, who, as Mr. Hanes says, entertained a different view than I present.

Senator BAILEY. I brought the point out for the purpose of clarification.

Mr. MORRIS. This is what I wrote Mr. Oliphant on February 9, 1938:

DEAR MR. OLIPHANT: In our telephone conversation of February 5, 1938, you expressed the thought that, due to the possibility of error, the proposed codification of internal revenue laws should not at this time be enacted as absolute law, but as prima facie evidence of what the law is in order to afford a better opportunity to develop what errors, if any, have crept in. You furnished me with 10 copies so that an examination could be made as to any erroneous statements which could be called to your attention. Our examination of those provisions which primarily relate to the litigation of tax disputes has not developed any error. Of course, we have not had the time to examine the substantive provisions.

As I stated to you, in reply to a letter from the Honorable R. L. Doughton, chairman of the Joint Committee in Internal Revenue Taxation, I advised, by letter dated January 18, 1939, that it was my view that a codification of the revenue laws and its enactment into absolute law would be a most helpful and desirable accomplishment. It was my definite understanding that this proposal had the active encouragement of the Treasury Department, and that the report

of January 14, 1938, of the subcommittee of the Committee on Ways and Means of the House met with the full approval of Undersecretary Magill. It was in the light of this apparent unanimity of opinion that I wrote the letter above mentioned to Chairman Doughton.

There is no doubt that the codification of the revenue laws, recognized as absolute law, rather than simply prima facie evidence thereof, would be helpful to this Division of the Department of Justice in the handling of revenue litigation. It cannot be doubted that such an enactment would constitute a definite step toward clarity, certainty, and simplicity. I would not, of course, urge that this be done until those responsible for revenue measures in the Treasury Department be thoroughly satisfied that the codification had been accomplished without any material changes in existing law. It was my very definite understanding that the proposed code had been prepared after months of study by members of the staff of the joint committee in collaboration with officials of the Treasury Department, who had subjected the material to the closest scrutiny in order to guard against the creeping in of any material error. It was also my understanding that the Treasury Department had expressed the desire that this undertaking be brought to such conclusion as to permit of its approval at this session of the Congress.

As above stated, so far as we have been able to determine, there has been no material change insofar as the code relates to our particular part of the work.

Very truly yours,

JAMES W. MORRIS,
Assistant Attorney General.

Now, subsequently when the examinations had been completed and, as I understand, the suggestions that were to guard against any material error that had been discovered had been carried out, I addressed the following letter to the chairman of your committee, under date of December 22, 1938:

MY DEAR SENATOR HARRISON: In a recent conversation with Mr. Stain, chief of the staff of the joint committee, I was advised of the progress of the proposed codification of the revenue laws which has been undertaken by the committee.

I am glad to learn that the long-realized need of a codification which will be recognized as the law rather than as merely prima facie evidence thereof is probably soon to be filled. This need has been especially impressed upon the Tax Division of the Department of Justice inasmuch as the function of handling revenue litigation rests with it.

It is evident that the confusion existing by reason of the number of revenue acts, containing in many instances the same basic provisions, to which reference must be made in the handling of cases arising under the various acts, constitutes a burden to the courts and counsel alike. Furthermore, several of these statutory provisions have been amended by executive order, but, since such changes have not appeared on the face of the statutes, it has been necessary to refer to the Executive orders to ascertain their nature and extent. The proposed codification will be particularly helpful in that it eliminates these sources of confusion.

I am confident that the enactment of the codification will be a definite step toward obtaining clarity, certainty, and simplicity in our revenue laws and will be of substantial aid to the Division in the handling of revenue litigation.

The staff of the joint committee deserves to be commended for its valuable contribution to the tax law.

Very truly yours,

JAMES W. MORRIS,
Assistant Attorney General.

That, Mr. Chairman, about states my view of it. I do not, as I said before, think that a piece of work that has been brought to the state that it is by men who are as diligent and expert in their tasks as are those who have taken the laboring oar in this, a staff of the joint committee which, as I understand it, is an organ of both the House and Senate, can contain within it a probability of any very substantial error. That has been further minimized by checking into it by the two departments that I have referred to. Even though there should be inadvertently some error—and I would not take the position that there is none, because few things are infallible—I can

hardly believe that such errors as may have crept in are of the character that cannot be much more easily corrected than can be errors that arise from the confusion that now exists. There are now some 34 or 35 volumes, are there not, Mr. Stam?

Mr. STAM. Thirty-five additional since 1873.

Mr. MORRIS. And there were 17 volumes then, as I recall it.

Mr. STAM. That is right.

Mr. MORRIS. Some 35 additional volumes since then, and scattered all through those are laws. If the law is to be a rule of conduct that is going to guide the citizen and Government in this work it seems to me in the interest of both, not to mention the great help it will be to the courts, to have a new point of departure so that difficulties that may arise can be more readily and more quickly detected and corrected.

The CHAIRMAN. Thank you very much. Are there any other questions?

(No response.)

The CHAIRMAN. I may state that I have before me a copy of a letter written to the chairman of the Ways and Means Committee, by Mr. George M. Morris, of the American Bar Association, and he suggested that he would appear if the committee desired him to do so. I would like to have that letter incorporated in the record.

Senator BAILEY. Before you get to that, I would like to ask the witness one question. In making the code did you undertake, in all cases, to reproduce the precise language that had been used in the statutes?

Mr. MORRIS. I think that question had best be addressed to Mr. Stam. Our examination of those provisions which relate primarily to our work showed that they were in such language that to us it seemed there was no possible confusion as to the intent, and the language itself was the language we would have put into it.

Mr. STAM. We did make every effort to reproduce the exact language, even down to the commas. It was all proofread and checked with the original statutes.

Senator BAILEY. There were times when some changes were made?

Mr. STAM. In order to adapt the code to future situations and not to the past there were times when we had to put in a few more words into it. Apart from that there was nothing added.

Mr. MORRIS. The intent, as we can see it, has been admirably written in the statute.

Senator RADCLIFFE. In putting in words you eliminated words sometimes also?

Mr. STAM. Some obsolete matters, yes.

Senator RADCLIFFE. I mean in trying to get the phraseology you would not only put in but you would eliminate?

Mr. STAM. Yes; but we did not change it. As far as possible the law is exactly as it is on the statute books.

The CHAIRMAN. I will ask the clerk to read the letter from Mr. Morris, of the American Bar Association.

Mr. MORRIS. May I be excused, Senator? I have to go before the Ways and Means Committee on another matter.

The CHAIRMAN. Yes. Thank you, Mr. Morris.

(The clerk read the following letter:)

AMERICAN BAR ASSOCIATION

Organized 1878

STANDING COMMITTEE ON FEDERAL TAXATION, 1938-1939

JANUARY 24, 1939.

Hon. ROBERT L. DOUGHTON,
*Chairman, Ways and Means Committee,
 House of Representatives, Washington, District of Columbia.*

MY DEAR MR. CHAIRMAN: An examination of the Codification of the Internal Revenue laws, as prepared by the staff of the Joint Committee on Internal Revenue, indicates that a highly sensible idea has been brought to a most satisfactory fruition.

Unless one has had experience handling questions which involve the statutes treating with our internal revenue, for a span of years (not at all an unusual experience in tax disputes), he can have little idea of the difficulty of achieving certainty as to what the applicable statute law is. If for taxpayers and their counsel these difficulties and uncertainties can be eliminated, the reduction of expense of tax controversies, and even the elimination of such controversies, should be greatly furthered.

Not only does it seem highly advisable that this painstakingly prepared codification should be enacted into law but it should be apparent that the sooner such action is taken the more beneficial will be the effect, particularly in the consideration of any revenue legislation during the present session of Congress. An intelligent consideration of any proposal for change would seem to require an assured knowledge of the law which it is proposed to change.

Expressing the hope that this hardly controversial proposal will be enacted into the law promptly, I am,

Sincerely yours,

GEORGE M. MORRIS.

The CHAIRMAN. Have there been any opposite views expressed against this proposal?

Mr. STAM. We have not heard of any.

The CHAIRMAN. Of course, the joint committee, I may say, have not studied the intricacies of this codification, because it would be impossible to do so. We had to rely upon the experts of the staff and on the Treasury Department and Department of Justice in this codification work, and we accepted it as such. I think it is quite important that the internal revenue laws should be codified, if it is possible, so we will know what is in the law, and we will work upon that basis.

Are there any other questions, Senator Bailey?

Senator BAILEY. No.

The CHAIRMAN. Senator Radcliffe, do you desire to ask any questions of Mr. Stam?

Senator RADCLIFFE. No.

Senator WALSH. Mr. Chairman, I move the bill be reported.

Senator GEORGE. Senator Bailey, would you mind repeating the suggested amendment?

Senator BAILEY. I offered it merely for discussion, not to be voted on.

Senator GEORGE. I understand.

Senator BAILEY. Add at the end of section 5—

The CHAIRMAN. That is on page 2, is it not?

Senator BAILEY. Yes. Under the repeal and savings provisions in section 4, the first paragraph of section 4 reads, in the final words, "effective, except as provided in section 5." Section 5 reads:

Any provision of law in force on the 2d day of January 1939, corresponding to a provision contained in the internal-revenue title shall remain in force until the corresponding provision under such title takes effect.

The corresponding title of such provision would take effect on the 2d day of January 1939, and therefore this code is binding as law regardless of former acts on the 2d day of January 1939. I suggested this language:

If there be conflict the original act shall be in effect notwithstanding this act and shall be controlling, and any act not brought forward shall, upon the showing that it is applicable, be in full force and effect notwithstanding it does not appear in this codification.

That is just providing if there is a possible conflict between this code and the former acts, and also it takes care of omissions. I am not insisting upon it, because I realize the necessity for certainty in the law. That is fundamental. I also realize that in the course of this session of Congress there may be errors discovered and we may correct them before we adjourn, and then if errors are discovered next fall, when we are not in session, they may be corrected in the following session. Meanwhile, this will be the law, and we will leave it to be worked out by the Joint Committee on Internal Revenue Taxation. If we find any difficulty we will correct it. I brought it forward for the purpose of suggestions. I am not inclined to insist upon it. The fact is I would rather have the code with some errors in it than have the present situation, which is like a man hunting for a needle in a haystack when he wants to find out about the tax liability.

The CHAIRMAN. Well, if the bill should be reported, I hope, in the drafting of the report, that you will make the suggestion that Senator George offered.

Mr. STAM. We will be glad to do that.

The CHAIRMAN. All those in favor of the motion of Senator Walsh will say "Aye." Those opposed will say "No."

(The motion was carried unanimously.)

Senator GEORGE. I think these gentlemen ought to write an introduction to this code, stating the circumstances under which it was framed, and any qualifying corrections.

Mr. STAM. I might say as to that, this will be published as a separate volume of the statutes at large, with an explanation, an introduction, and tables in the back showing the statutes from which the code language was derived.

Senator GEORGE. The statement that it is the intent to bring forward all the essential law, in case there be inaccuracies or omissions. The Congress would be grateful to have its attention called to it.

The CHAIRMAN. Senator George, will you make the report to accompany this bill? Consent has been given by the Senate to file reports on bills during the recess until Wednesday. If this report can be filed promptly, we will then be able to get the bill up quickly. The committee will now adjourn.

(Whereupon, at 11:35 a. m. the committee adjourned.)

X