APPLICATION OF STATE SALES AND USE TAXES TO TRANSACTIONS IN FEDERAL AREAS

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE UNITED STATES SENATE

SEVENTY-SIXTH CONGRESS

THIRD SESSION

ON

H. R. 6687

AN ACT TO AUTHORIZE THE LEVY OF STATE, TERRITORY, AND DISTRICT OF COLUMBIA TAXES UPON, WITH RESPECT TO, OR MEASURED BY SALES, PURCHASES, OR USE OF TANGIBLE PERSONAL PROPERTY OR UPON SELLERS, PURCHASERS, OR USERS OF SUCH PROPERTY MEASURED BY SALES, PURCHASES, OR USE THEREOF OCCURRING IN UNITED STATES NATIONAL PARKS, MILITARY AND OTHER RESERVATIONS OR SITES OVER WHICH THE UNITED STATES GOVERNMENT MAY HAVE JURISDICTION

APRIL 23, 1940

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APPLICATION OF STATE SALES AND USE TAXES TO TRANSACTIONS IN FEDERAL AREAS

TUESDAY, APRIL 23, 1940

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in the Finance Committee room, room 312, Senate Office Building, Senator Walter F. George, (chairman), presiding.

Senator GEORGE. The committee will please come to order. The subcommittee is meeting for the purpose of considering and hearing testimony on H. R. 6687, a bill which passed the House of Representatives on July 26, 1939. I will insert in the record at this point the text of H. R. 6687.

[H. R. 6687, 76th Cong., 3d sess.]

AN ACT To authorize the levy of State, Territory, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof occurring in United States national parks, military, and other reservations or sites over which the United States Government may have jurisdiction

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all taxes, levied by any State, Territory, or the District of Columbia upon, with respect to, or measured ~~by sales~~ *by, sales*, purchases, or use of tangible personal property, or upon sellers, purchasers, or users of such property measured by sales, purchases, or use ~~thereof may~~ *thereof, may* be levied and collected in the same manner and to the same extent with respect to ~~transactions~~ *any transaction* occurring in whole or in part within United States national parks, military and other reservations or other sites located within the external bundaries of such State, Territory, or the District of Columbia, as ~~with respect to transactions occurring~~ *if such transaction occurred* elsewhere within the territorial boundaries of said State, Territory, or the District of Columbia.

Passed the House of Representatives July 26, 1939.
Attest: SOUTH TRIMBLE, *Clerk*.

Senator GEORGE. Congressman Buck, you may come forward and open the hearing.

STATEMENT OF HON. FRANK H. BUCK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BUCK. Mr. Chairman and Senators——

Senator GEORGE (interposing). You are the author of this bill, are you not?

Mr. BUCK. I am the author of the bill.

Senator GEORGE. You may proceed.

Mr. BUCK. The purpose of this bill is to provide for uniformity in the administration of State sales taxes and use taxes, I should say, within as well as without Federal areas. It proposes to authorize a levy of State taxes with respect to or measured by sales or purchases of tangible property on Federal areas. The taxes in most cases would be paid to the States by sellers whose places of business are off the Federal areas. For instance, at the present time we find that sales are contracted, let us say, in a State away from the Army reservation, but because delivery is made and title taken in the reservation, it is contended that as title has not passed until that time, no tax is payable.

It is to correct that injustice that we have introduced this bill. That is one of the purposes, I should say.

The passage of this bill will clearly establish the authority of the State to impose a sales tax with respect to sales completed by delivery on Federal areas, and insofar as the State tax might be a prohibitive burden upon the United States, they would not, with the exception that I shall state presently, impose any duty on any person residing or located upon the Federal area.

This action would merely remove any doubt which now exists regarding the authority of the State to require retailers located within the State and off the Federal areas to report and pay the tax on the gross receipts from sales on which delivery is made within Federal areas.

There is a minor problem involved and presented which involves the responsibility for such taxes as might be paid on sales at commissaries, licensed traders, and other similar agencies. We had some bad situations with regard to these licensed traders. There are licensed traders on certain reservations, for instance, at Palm Springs, Calif., you have your reservation line right down the street, and on one side of the street you have merchants who are paying sales taxes, and on the other side you have licensed traders who are not paying any sales tax on identically the same types of goods.

In that connection, and I think this is probably as good a time as any, I should like to read to the committee a telegram which I received yesterday from Governor John E. Miles of New Mexico, as follows:

Hon. FRANK H. BUCK,
Representative of California,
House Office Building, Washington, D. C.

This acknowledges your letter April 10. New Mexico is primarily interested in passage of House Resolution 6687 as originally introduced by you. Amendment offered by Senator Robert M. La Follette in behalf of Department of Interior, exempting Indian reservations from the provisions of your original resolution practically nullifies the purpose of your bill insofar as New Mexico is concerned. There is common practice in New Mexico by which merchants who would normally be taxable are able to avoid State taxation by locating their business operations on Indian reservations. I speak for New Mexico, and in particular the sales-tax division of the New Mexico Bureau of Revenue in urging passage of House Resolution 6687 as originally introduced by you. If possible I would like this telegram to be entered into the record of the hearing scheduled for Tuesday, April 23.

JOHN E. MILES,
Governor of New Mexico.

Senator GEORGE. The committee received a similar telegram which I intended to put into the record anyway, but your telegram covers the same point.

Mr. BUCK. At this point, Mr. Chairman, if I may submit to you also for inclusion into the record a brief summary, which is very short, of the need for congressional action to prevent the avoidance of State sales taxes, and in this brief I call your attention to the recent decisions and opinions which indicate that some action along this line might well be taken for the advantage of all concerned.

Senator GEORGE. It will be entered in the record.

(The same is as follows:)

NEED FOR CONGRESSIONAL ACTION TO PREVENT AVOIDANCE OF STATE SALES TAXES WITH RESPECT TO SALES ON FEDERAL AREAS

* * * * * * *

Recent decisions of the Supreme Court of the United States in the cases of *James* v. *Dravo Contracting Company* ((Dec. 6, 1937) 82 L. Ed. (Adv. Ops.) 125), *Silas Mason Company* v. *Tax Commission* ((Dec. 6, 1937) 82 L. Ed. (Adv. Ops.) 154), and *Atkinson* v. *State Tax Commission* ((Jan. 31, 1938) 82 L. Ed. (Adv. Ops.) 440) while opening the way for the application of certain nondiscriminatory State taxes on Federal areas, except insofar as those taxes may constitute a burden upon the United States, have not clearly indicated the exact extent of State authority in this respect.

Divergent views being expressed by taxpayers and taxing authorities makes it evident that prolonged and expensive litigation will be required to clarify the law on the subject if the limits of State authority with respect to the various types of Federal areas are to be established through judicial decisions. This litigation and the period of uncertainty which will necessary exist pending final decisions by the United States Supreme Court may, however, be avoided through Congressional action, a precedent for which is to be found in an act of Congress approved June 18, 1936, amending section 10 of the Hayden-Cartwright Act (49 Stat. 1521; 23 U. S. C. A., section 55a) relating to State motor-vehicle fuel taxes. Attention has, in fact, already been directed to the problem through the introduction of a bill (S. 920) by Senator Schwartz at the first session of the Seventy-fifth Congress.

It is proposed, through Congressional action, to authorize the levy of State taxes with respect to or measured by sales or purchases of tangible personal property on Federal areas. The taxes would in the vast majority of cases be paid to the State by sellers whose places of business are located off the Federal areas and who make sales of property to be delivered on such areas. Reference to the California Retail Sales Tax Act of 1933 (Stat., 1933, ch. 1020, as amended), which imposes a tax upon retailers for the privilege of selling tangible personal property at retail, may serve to illustrate the problem confronting the States employing this type of tax.

The application of this tax to the gross receipts of a retailer from sales in which delivery is made to an area over which it is asserted the United States possesses exclusive jurisdiction is being vigorously contested, even though the retailer's place of business is located off the Federal area and the negotiation leading to the sale are conducted and the contract of sale is executed at the retailer's place of business. Despite the existence of these facts, which are generally sufficient to give rise to liability for the tax and which, insofar as the theory of the tax is concerned should, it is submitted, be sufficient to impose tax liability, exemption from the tax is asserted upon the slender ground that title to the property sold passes on the Federal area and, accordingly, the sale occurs on land over which the State lacks authority.

Congressional action clearly establishing the authority of the State to impose its sales tax with respect to sales completed by delivery on Federal areas, except insofar as the State tax might be a prohibited burden upon the United States would not, with the exception hereinafter noted, impose any duty upon any person residing or located upon the Federal area. Such

action would merely remove any doubt which now exists concerning the authority of the State to require retailers located within the State and off the Federal areas to report and pay the tax on the gross receipts from their sales on which delivery is made to a Federal area. A minor problem presented with respect to the application of State sales taxes on Federal areas involves the responsibility for such taxes of post exchanges, ship-service stores, commissaries, licensed traders, and other similar agencies operating on Federal areas.

In view of the policy adopted by Congress in the amendment of section 10 of the Hayden-Cartwright Act providing for the application of motor-vehicle fuel taxes with respect to the sales or distributions of such agencies, it would appear to be entirely proper to provide for the application of sales taxes with respect to the retail sales of tangible personal property of such agencies. Congressional authorization for the imposition of State sales taxes on Federal areas should include authorization for the imposition of State use taxes which are designed merely to prevent avoidance of the sales taxes through purchases outside the State or in interstate commerce.

The States have been extremely generous in granting to the United States exclusive jurisdiction over Federal areas in order that any conflicts between the authority of the United States and a State might be avoided. It would appear to be an equally sound policy for the United States through congressional action to prevent the avoidance of State sales taxes with respect to sales on Federal areas by specifically authorizing, except insofar as the taxes may constitute a burden upon the United States, the application of such taxes on those areas.

Senator GEORGE. Let me ask you, Congressman. Some question has arisen as to whether the bill includes franchise taxes, license taxes, and direct personal-property taxes. Are you prepared to make a statement in regard to that?

Mr. BUCK. It is not my intention to include direct personal-property taxes, and I do not believe that the language can be construed as including franchise taxes. The language reads:

all taxes, levied by any State, Territory, or the District of Columbia,

and so forth. And I propose to suggest an amendment—

by or under the authority of any State, Territory, or the District of Columbia, with respect to or measured by sales, purchases, or use of tangible personal property.

Senator GEORGE. The language seems to be limited to sales or use taxes.

Mr. BUCK. That is the intention of the author of the bill; I will say that much.

Senator BROWN. While on that point, Mr. Buck, there comes to my mind this recent decision on the sales tax levied by the city of New York. Your bill seems to cover merely "any State, Territory, or the District of Columbia," and not any subdivision of a State, such as a county or municipality. Do you intend to leave them out?

Mr. BUCK. My attention was called to that yesterday, and Mr. Pierce, the secretary of the State Board of Equalization of the State of California, who will follow me, will suggest one or two exact wordings of minor corrective amendments, one of which will take care of that point which you have in your mind there.

Mr. Chairman, there is precedent for this action insofar as other sales taxes are concerned, in view of the fact that under section 10 of the Hayden-Cartwright Act, provision was made for the collection of motor-vehicle-fuel taxes within the Federal reservations, and really this is only an extension of the principle involved in that act as far as that is concerned.

I have had the privilege of examining the report of the War Department on this bill, and I find that they are somewhat fearful that under the terms of the bill, an attempt may be made to stretch State jurisdiction to other matters; therefore, at the proper time Mr. Pierce will also suggest to you an amendment which will disclaim any effort to extend State jurisdiction to such matters as police matters and things of that kind.

I hope that with the amendments we are going to suggest, that you will now see your way clear to make a favorable report on the bill, because it is a matter of considerable importance. The States have been very generous in granting jurisdiction to the Federal Government in areas they have ceded to the Government, and it seems to me that the Federal Government ought not to put itself in the position where either through licensing traders on reservations or otherwise, it puts the citizens in a given State at a disadvantage as far as tax collections and payments are concerned.

I may add that this bill had the unanimous approval of the Committee on Ways and Means when it was considered in the committee over there, and a favorable report from the Treasury Department, and although the other departments were notified at that time, they did not render any opinions. I understand that since, two of them have made certain suggestions for amendments. I believe that their objections, including that amendment offered by Senator La Follette last year, will be taken care of by the amendment which Mr. Pierce will offer, and I will now, unless you have further questions, call upon Mr. Pierce, the secretary of the California State Board of Equalization, which is the tax collecting and levying agency of the State of California, to make a statement.

Senator GEORGE. Very well. Mr. Pierce.

STATEMENT OF DIXWELL L. PIERCE, EXECUTIVE SECRETARY, STATE BOARD OF EQUALIZATION, STATE OF CALIFORNIA, SACRAMENTO, CALIF.

Mr. PIERCE. Mr. Chairman and Senator Brown: As Congressman Buck has told the members of the committee, the object behind this bill is to avoid tax exemption on Federal areas in States where there is no public purpose served by such exemption, and there is no thought here to cast any burden upon the operations of the United States in any way through forms of State taxation.

It has developed in California, and I think in practically every other State which levies excise taxes of the type which are covered by this amendment, and in some form or other nearly every State does, that individuals who have access to these reservations, engage in business there in such a way as to be in competition with other persons engaged in similar businesses outside of the reservations, but within the boundaries of the State, with the result that through lack of jurisdiction to do anything corrective on the situation, the States have found themselves in a very difficult situation with their own taxpayers, and the objective here is to secure from the Federal Government sufficient authority to correct that evil, and no greater authority. That is all that we are asking for, and we do not wish in any way to interfere with the operations of any of the departments

of the Federal Government which may be using Federal reservations within the several States in carrying out the objectives of those departments.

One of the amendments that we wanted to suggest was one to correct the situation to which Senator Brown adverted, that is, the proposed law as it now reads might be limited in its terms only to those taxes actually imposed by the State itself and not by any political subdivision of the State. Inasmuch as all of those subdivisions derive their taxing power eventually from the sovereignty of the State, our suggestion would be that in the third line of the bill on page 1, after the words "levied by", there be inserted a comma, and then the words "or under the authority of,". Then the act would read that "all taxes, levied by, or under the authority of, any State, Territory," and so forth, and we think that would cover the situation.

There are, as you gentlemen know, sales taxes in the city of New York where there are some Federal reservations, and also similar taxes in the city of Birmingham, Ala., and there are several other such taxes, I believe, in cities in Missouri and other jurisdictions. It happens that in California, that we do not have any, but there are such taxes in other States.

Now, as to the other situation—the possibility that we may have unintentionally impinged on the authority of these departments that have the use of Federal reservations in carrying out their objectives in the several States, we would like to suggest an amendment at the conclusion of the bill after the words "District of Columbia", in line 10, page 2, to this effect:

but nothing contained herein shall be construed as otherwise affecting the jurisdiction of the United States over such areas, nor as authorizing the levy or collection of said taxes upon or or with respect to any transaction in which such property is sold, purchased, or used by the United States or any instrumentality thereof, nor as affecting any existing law with respect to the taxation of Indians.

In other words, gentlemen, our thought there being that this is not in any sense to be regarded as an extension of the power of the States to tax insofar as any activities of the Federal Government may be concerned, but only an act designed to prevent individuals who may be permitted to engage in private transactions on such reservations from using those Federal reservations as tax-exempt islands within the States, to the detriment of the smooth operation of the States' taxing power, and also to the considerable fiscal detriment of the States, because the States are thus deprived of revenue to which they would otherwise justly be entitled.

We do not feel with these amendments there could be any question concerning the impingement on the operation of any department which has such reservations within any State.

Senator BROWN. It has occurred to me that we might have some difficulty in the matter of enforcement on Federal reservations, that is, where we might have a clash with the Federal authority, particularly if you were proceeding against property rather than against the person. What is the California method of enforcing its sales taxes? What do you do with a person who refuses to pay?

Mr. PIERCE. The most frequently used method, Senator Brown, is to reduce our claim against them to the form of a judgment and then proceed with the execution. We also deny them the right to

engage in further retail trade in California until such time as they have satisfied their sales-tax obligations.

Senator BROWN. Is there any criminal penalty?

Mr. PIERCE. There is. We have never resorted to it to any extent in the entire 7-year period—6 years, but it is now going onto 7 years—that we have had sales-tax activity there. We have, to my recollection, only in about half a dozen cases ever had any criminal action, and those were only the most flagrant violations.

Senator BROWN. Do you have the right to enforce the judgment by going upon a Federal reservation and seizing the property of a citizen of California on that reservation? Do you have the right to cross the Federal line and go in to seize the property?

Mr. PIERCE. I presume that if we have the right to levy and collect the tax, and I assume a tax which we have the right to levy but no ready means to collect is a rather undesirable sort of a tax—I suppose that a frank answer would require saying that apparently we would have to provide for execution on private property located on the reservation belonging to the tax debtor, but of course that would not involve, I take it, any molestation of Federal property in any way, but it would simply be such property as he might have there.

Senator BROWN. Of course, it would involve an entry by an officer of the State under the State's judicial process, and his possession of authority to enter. I don't know much about it, but I was wondering whether or not there would be a conflict between the Federal and the State authority in that way.

Mr. PIERCE. I doubt if there would be. We have a precedent in that type of taxation, and I do not know that it has ever led to any conflict, although it has been in force for some 3 years now. I refer to the tax under the Hayden-Cartwright Act. The States are handling the tax, which is enforced on the Federal reservations, and I have yet to hear of any such clash.

If it does not impede the object for which the Federal reservation has been established to permit this private activity to be carried on there—in other words, to allow private persons to engage in business there—we do not believe it would impede the object of the Federal reservation, then, to permit the State in the orderly process to collect whatever taxes might normally be due with respect to that private activity if that were carried on elsewhere within the State, and that is all we ask. We do not wish in any way, of course, to impinge upon the jurisdiction of the Federal Government with respect to that particular Government reservation, but I suppose, as you say, if our taxes are going to be of any enforceable character, and assuming that the man might not have property elsewhere in the State which we could reach—and very often he would—it might be necessary, in order to have an effective tax, for us to go onto the reservation and do something about it if he did not pay the tax, but I think those cases would be very rare indeed, and I cannot, in my own mind, see that it would ever cause any such conflict between the two jurisdictions as to result in any upsetting of the purposes for which the reservation was established.

For example, you are, of course, aware—and we constantly encounter this—that the same taxpayer will owe both Federal and State taxes, and be engaged in some activity in the State, and he

frequently gets in difficulty and cannot pay those taxes. We have never had any serious clashes with the Federal Government as to how we were going to divide what we could find. Those matters are handled properly through referees in bankruptcy, if the man is a bankrupt, or through other such methods, and we have never had any difficulty with the Federal authorities in California in that regard, and I doubt if any such difficulties have been experienced in other States.

Senator BROWN. I think perhaps I was minded to ask you that question by a little incident that occurred at Fort Mackinaw long before I was born, but I recall hearing considerable about it, and I do not suppose it is any precedent at all, but on the military reservation there, they permitted a public school to be built and, after a few years, the commandant of the fort and the local authorities got into some difficulties about the matter of who owned the building, and the land, and so forth, and I well recall the tradition that a soldier stood with fixed bayonet to prevent a 5-year-old youngster from going to school there. Of course, a situation of that kind can arise in the conflicts on jurisdiction.

Mr. PIERCE. I believe I could undertake to say that we would not call out the National Guard if we had any difficulty under the law, but I find it very difficult to imagine a case of that type arising in view of the fact that taxes involving very much more money both in State and Federal revenues, are adjusted daily with the Federal Government off the reservation, and I cannot see why being on the reservation would cause any further complication.

In speaking to you today on this subject, I should like to make it clear that I am speaking for the California State Board of Equalization which, as Congressman Buck has told you, is our tax administrative agency in California where our sales tax is, as it is in many other States, an important source of State income. Our sales tax for this fiscal year will probably amount to about $93,000,000 just in 1 year in California. We have no way of telling you definitely how much revenue may be involved in these Government reservation transactions to which the bill relates, but it seems reasonable to assume that it may very well be as much as 1½ percent, so that we are talking about revenue that the State is being deprived of to the extent, perhaps, of a million and a half dollars annually, and that, of course, is just one State of the Union. As I say, other States in one form or another are deprived of revenue of that kind, and that is not revenue which would be derived from taxing any sale from the Federal Government whatever.

As a matter of fact, regardless of any provision such as we are suggesting by way of amendment to this bill, we would not attempt that in California, because our California law contains an express exemption of all sales made to the United States Government or any agency thereof.

This whole subject was quite thoroughly discussed at the meeting of the National Association of Tax Administrators held at Asheville, N. C., just about a year ago, May 2, 1939, and it was following that meeting that the matter was brought to the attention of Congressman Buck, and the bill which is now before you was introduced. At that meeting a resolution was unanimously adopted—there were

States represented there from all over the United States, and the resolution was to this effect:

Whereas recent decisions of the Supreme Court of the United States have opened the way for application of nondiscriminatory State taxes on Federal areas; and

Whereas congressional action clearly establishing the authority of the States to impose such taxes would remove any doubt which may exist with respect thereto; and

Whereas it is manifestly desirable, both for the preservation of the States' revenues and for equitable treatment of individuals within their borders, that this be done; Now, therefore, be it

Resolved by the National Association of Tax Administrators at its Seventh Conference assembled at Asheville, N. C., this 2d day of May, 1939. That the Congress of the United States be urged to pass legislation substantially as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all taxes levied by any State, Territory, or the District of Columbia, upon, with respect to, or measured by sales, purchases, or use of tangible personal property, or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof may be levied and collected in the same manner and to the same extent with respect to transactions occurring in whole or in part within United States national parks, military, and other reservations or other sites located within the external boundaries of such State, Territory, or the District of Columbia as with respect to transactions occurring elsewhere within the territorial boundaries of said State, Territory, or the District of Columbia;" and be it further

Resolved, That the President of this association be hereby authorized and directed to appoint a committee to take such action as may be deemed appropriate to assure the enactment of the foregoing provisions into the laws of the United States of America.

It was my privilege at that time to serve as president of the organization, and in that capacity I brought the matter first to the attention of Congressman Buck, and the introduction of the bill which has been, as you know, acted upon favorably by the House of Representatives, has resulted.

Senator GEORGE. Is it the view of the State authorities that the bill should apply to all sales made by commissaries, and post exchanges?

Mr. PIERCE. I am not sure that it is. I am rather of the opinion that eventually the status of such transactions will become a question for judicial determination rather than administrative determination or legislative determination. I mean the status of such transactions is one as to which perhaps we need the guidance of the courts eventually.

You perhaps are aware, Senator, of a recent decision—it came up in South Carolina—to the effect that a C. C. C. canteen would not be subject to the licensing laws of that State for the reason that it was an instrumentality of the Federal Government. That was in the Federal Court down there. There was an expression by our own Supreme Court in California in the case of the *Standard Oil Co. of California* v. *Johnson*, which later came up to the United States Supreme Court as the *Standard Oil Co. of California* v. *California*, to the effect that a post exchange—that was the post exchange there in the Presidio—was not a governmental agency. Our court had held that the transaction was taxable on the theory that the Presidio of San Francisco, while a Federal area, was within the territorial confines of the State, and the sale, having originated outside of

the Presidio, would nonetheless be taxable, although the delivery of the motor-vehicle fuel was made within the Presidio, but the Supreme Court of the United States held otherwise and to the effect that the Presidio constituted an island carved out of the jurisdiction of California, and that for all practical purposes the sale might as well have been made, perhaps, in another State.

Then, upon the point as to whether or not the post exchange was a governmental agency, the Court said that it became unnecessary to rule because of its view as to the jurisdictional point, and, as a result, our State attorney general advised us that the final expression of our Supreme Court not having been reversed, we should be governed accordingly, but what the eventual determination will be, I suppose only the Supreme Court of the United States knows.

Senator GEORGE. Under the Hayden-Cartwright Act, the tax is levied on all sales of petroleum products made by and through the post exchanges?

Mr. PIERCE. That is correct.

Senator GEORGE. Unless for the exclusive use of the Government itself.

Mr. PIERCE. Yes; as a matter of fact, I do not suppose that sales would ordinarily be made through the post exchange for the use of the Government, but commissaries are a different matter, and the quartermaster would make withdrawals of stocks for the use of the Government sometimes, and for private purposes at other times. What he makes for private purposes, under the Hayden-Cartwright Act, are taxable, and the others are not. The post exchange, of course, ordinarily would operate for the purpose of supplying the personnel, and frequently not just the Army personnel, but such civilian personnel as also has connection with the post, reserve officers, and others. These sales are taxed but that is because the act itself makes express provision, as you have pointed out, for collection by the post exchanges of the tax.

We have not attempted to suggest that in this bill for the reason that a law covering all commodities would be, of course, very much broader. I mean, that was just the one commodity, gasoline, and one as to which the taxes are always expressed in terms of gallons rather than in terms of the value of the product sold, and it would be very much easier to handle in that way. We felt that to require the Government to collect sales taxes generally for the States might be going a good deal further than Congress would see fit to go at this time—so the object of the bill is primarily, as I have said earlier, to make it possible at least where the transactions are of a private character and do occur on the reservation, to impose the same taxes as would otherwise be imposed if the transactions were off the reservation.

As to what has been the experience in some of the other States, I think it may be helpful to the committee to hear briefly from some communications that we have from tax authorities elsewhere.

I have before me, and I will just read parts of it, a letter from T. M. Jenner, Tax Commissioner of the State of Washington, written this month. It was directed to Mr. Albert Lepawsky, executive director of the Federation of Tax Administrators, Chicago, Ill., which is in a sense the clearing house organization for such associations

as the National Association of Tax Administrators. To this office tax administrators submit their questions and send their requests for suggestions which they think might be helpful to them in their work, and that is how Mr. Jenner happened to be writing to Mr. Lepawsky on the subject.

Mr. Jenner says:

The question of State taxing jurisdiction within various Federal areas has certainly been a tough one in the State of Washington. You probably recall that our State imposes an occupation tax upon all persons for the privilege of engaging in business in this State and, also, a 2-percent consumers retail sales tax, which is quite a different thing from a retailer's privilege tax, and also a stamp tax on cigarettes amounting to 2 cents per package.

We have every type of Federal reservation that is known to man, and among these are a considerable number of forts, magazines, arsenals, dockyards, and "other needful buildings." By a statute adopted by this State in the year 1891 the consent of the State was given to the acquisition by purchase or condemnation by the United States of any land for the "sites for locks, dams, piers, breakwaters, keepers' dwellings, and other necessary structures and purposes required in the improvement of the rivers and harbors of this State or bordering thereon or for the sites of forts, magazines, arsenals, docks, navy yards, naval stations, or other needful buildings authorized by any act of Congress, and ceding to the United States jurisdiction over all such lands as may have been or may be hereafter acquired by the United States, retaining only a concurrent jurisdiction with the United States only so far that all civil and criminal process may issue under the authority of this State, etc." This statute remained the law of this State until repealed by our 1939 legislature.

We have been all the way to the United States Supreme Court upon questions involving the foregoing statute.

Then he discusses some litigation with which I am sure you are familiar. Then he goes on:

We have also been to the United States Supreme Court with the Rainier National Park Co. upon the question of whether or not the State might impose an occupation tax upon the Park Co. and also require it to collect the retail sales tax upon sales of tangible personal property made by them within that area. I always thought the Park Co. was foolish to even contest the right of the State upon the territorial question inasmuch as our statute consenting to acquisition by the Federal Government of the Rainier National Park specifically provided that the State retained its power to tax persons and property within such area.

He goes on and discusses some of their individual situations, as follows:

Fort Lewis is a large Army reservation located quite close to the city of Tacoma. At the present time there are several thousand men and officers of the United States Army located there. McChord Field is a large Army air station which adjoins and is really a part of Fort Lewis. A large building operation is now in progress at McChord Field and hundreds of civilian workmen are employed there. Not only members of the United States Army but these civilian employees are constantly purchasing articles in the city of Tacoma which are delivered to them at Fort Lewis or McChord Field and we have discovered no way in which we may legally impose our sales tax in respect to such sales.

The post exchange at Fort Lewis issues credit cards to Army officers and possibly to men in the ranks and, armed with these credit cards, they purchase articles in the city of Tacoma, and the merchants' books show wholesale sales to the post exchange. In many cases the articles purchased are delivered by the merchant to the Federal reservation.

The Bremerton Navy Yard, which is located in the center of a city of around 20,000 population, and only a short distance from the city of Seattle, employs at one time two or three or four thousand civilian employees. Within the area of the navy yard certain concessions have been granted to persons who have the right to sell various articles, such as meals, candy, cigarettes, etc. We have

never been able to require these concessionnaires to collect the sales tax or to pay an occupation tax notwithstanding the fact that they have no connection whatever with the Federal Government other than being a tenant.

At Fort Vancouver, which adjoins the city of Vancouver which has a population of around 30,000, we discovered that quite a number of soldiers barracked there were buying large quantities of unstamped cigarettes within the area of the fort and reselling them to Tom, Dick, and Harry of the civilian population of the community.

We also have quite a number of Indian reservations in this State and we now have pending before our Supreme Court the question of the State's right to impose an occupational tax--

and so forth. He concludes as follows:

It seems to me that Congress should, by appropriate legislation, subject every person engaged in private business within these Federal areas to nondiscriminatory State taxation, and should also restore to the States a limited taxing jurisdiction over these areas and should settle once and for all that Fort Lewis, near the city of Tacoma, is still a part of the State of Washington * * *.

In other words, the situation confronting State authorities is by no means trivial, but it has really assumed proportions that I think are worthy of your attention. On the other hand, our solution is not one of trying in any way to burden the Government or its personnel, but to prevent these borders of the reservations from becoming barriers behind which private persons engaged in business on the reservations may hide and say unpleasant things to those of us who are trying to collect taxes uniformly within the State.

It occurs to us, if I may be perhaps a bit repetitious, that if the purpose for which the Federal reservation was established is not being interfered with by permitting persons to engage in private activities thereon, then we cannot possibly interfere with that purpose anymore by just collecting the same tax on that private activity as would otherwise be collected if the activity were carried on elsewhere within the State.

Senator GEORGE. Is it the view of the State authorities that they should have the power to impose this sale and use tax within all reservations and all areas? In Indian reservations and parks generally, as well as those parks which were created prior to the statehood of the State in which they are located?

Mr. PIERCE. Yes, sir; and the reason for that being that we think there is no logical distinction to be found in the date of the creation of a park. For example, if the Yosemite National Park in California were created after California became a State, which it was, and the concessionaires in the Yosemite National Park are required, which, as a matter of fact, they are to pay the California Sales tax with respect to the operation of their hotels and other such activities in the park, there seems to be no good reason why the same thing should not be done with respect to concessionnaires in a park in Wyoming which may have been created before Wyoming was admitted as a State. The status of the concessionaires is not affected by the time the park was created, and it seems that the just, fair, and logical thing to do would be to provide for the same uniform policy throughout the United States without respect to the time that parks were created.

The real distinction should be that the State is addressing itself only to that type of activity which it normally would have the right to tax if carried on outside of the park area. I am sure that the

members of the committee will realize that the Federal Government does not have to get behind any jurisdictional barrier and keep its property on Government reservations to avoid having taxes imposed on it by the States. That is so elemental that it does not need any citation of authority. The Federal Government is in no danger of being set upon by the States with respect to its governmental activities or its Government property through any taxes that the States might impose by reason of any authority which you might grant here to allow us to impose taxes within reservations. If the Federal Government has any property, as it does in large amounts, out in the broad area of the States, the States have no authority to levy on that in any way, because in so doing they would be impinging upon the sovereignty of the other Government. The object of the reservations and their proper office is generally to keep all persons from meddling there—that has been touched upon by Senator Brown.

And the States have been pretty longsuffering, as Congressman Buck has told you, because we did not want to do anything which would even be interpreted as a disposition to meddle on Federal reservations, but we have been confronted by this situation where people are doing private business on Federal reservations and we are no longer concerned with a theory. There is the fact right before us, that there is a large volume of private activity being carried on in these reservations in our States. This is costing a good deal in tax avoidance and creating inequitable situations between merchants.

Senator BROWN. On the point that you have mentioned, that the statute undoubtedly gives the State the power to enforce the collection of the tax, the bill reads that it—

> may be levied and collected in the same manner and to the same extent with respect to any transaction occurring in whole or in part within United States national parks, military and other reservations or other sites located within the external boundaries of such State, Territory, or the District of Columbia, as if such transaction occurred elsewhere within the territorial boundaries of said State, Territory, or the District of Columbia.

So that would undoubtedly give you the power to go in there and enforce your collection by any method that the courts of the State provide.

Mr. PIERCE. I am afraid that to give the power to levy a tax without providing for the method of enforcing its collection would be something like being told to go to the swimming hole and hang your clothes on a hickory limb, but don't go near the water. A tax that you cannot collect you might as well not levy.

Senator GEORGE. Under the bill, undoubtedly the State would have the power to use all of its processes to collect the tax.

Mr. PIERCE. Yes, sir.

Senator GEORGE. And, as you say, it seems to follow, necessarily from the right to levy the tax.

Mr. PIERCE. I should think so.

I have similar letters from several other States—that is, to the same effect as the one I read from Mr. Jenner, but I do not want to prolong the hearing unnecessarily. I might mention just a few of them, and then if you would like any further detail, I should be very happy to furnish it. One of such letters came from the State of Wyoming, and we have already heard from the State of New Mexico.

I might say that our neighbors in the State of Arizona have similar troubles. They have about the same problems as the State of New Mexico, and to some extent as the problems we have in California.

Our position is perhaps a little more difficult for the reason that we are on the coast and have more Federal reservations than they do.

From the State of Wyoming, we have a letter from Mr. W. J. Dalton, who is a member of the Wyoming State Board of Equalization, which performs similar functions in Wyoming to those of the State Board of Equalization in California, and he has written to Mr. Lepawsky as did Mr. Jenner, on the same subject, and he said that Wyoming is strenuously supporting this bill, H. R. 6687, as it will greatly aid in the administration of the sales tax within his State. Under the selective sales tax act of 1937, the purchases made by the United States Government and all of its activities are expressly exempted by Wyoming.

That same thing is true in California.

At this particular time, all sales made within the Yellowstone National Park are exempt because of the fact that the Yellowstone was established prior to the time that Wyoming was admitted to the Union.

I presume that is what Senator George had in mind a little while ago.

Senator GEORGE. Yes. That is an amendment offered, I think, by Senator Wheeler, which would exempt any national parks acquired prior to the admission of the States in which they are located, and that would affect, as I understand it, the Yellowstone Park, the Hot Springs, Ark., Park, and the park in Oklahoma.

Mr. PIERCE. I believe it would.

Senator GEORGE. Certainly those.

Mr. PIERCE. Conversely, one of the other parks, the Yosemite in California, would not get the benefit of that. Our point is simply that it is very unfair as a matter of national policy to say that people traveling in the Yosemite National Park shall pay the sales tax there on the meals and the curios that they buy, but when they go up to the Yellowstone, they shall not, just for the reason that California happened to be admitted to the Union a little sooner than Wyoming was and the park established after the State was admitted, whereas as Yellowstone was established earlier.

It also seems to us that from the standpoint of other persons engaged in the operation of resorts in the State of Wyoming, it is definitely unfair. There is no reason why those persons should have to cater to the tourists with the sales tax added to their prices, whereas the concessionnaires in the Yellowstone National Park should be permitted to cater to the tourists without taking the tax into account. It does not occur to us that any definite Federal purpose is served by that, and that the collection of the Wyoming sales tax on a nondiscriminatory basis in the Yellowstone National Park could not possibly interfere with the full jurisdiction of the Federal Government.

That is the only amendment, incidentally, that has been offered that has not, I believe, been quite fully covered by the amendments proposed, and that is the one submitted by Senator Wheeler. In all

the other points we have tried to meet the questions raised by the several departments of the Federal Government, because our thought is not to place any burden on the Government or any governmental agency by virtue of this bill, but only to do those things with respect to the transactions occurring on the reservation which we might do if the transactions did not occur on the reservation.

This matter was taken up at the convention at Asheville last year and there was no dissenting voice at all. While naturally one might be a little inclined to say that there would not be any dissenting voices when you have tax administrators getting together figuring some way to collect more taxes, on the other hand we do not want to collect any taxes at the expense of interfering with the efficiency of the Federal Government.

I might add, incidentally, that our attorney general in California, Earl Warren, who, as a member of the executive committee of the National Association of State Attorneys General, advised me that he had taken the matter up with his fellow members, and that they were unanimously of the view that I have expressed here this morning, and that they were urging that the committee and the Congress take the action indicated.

Our whole thought in filing the amendments which have been suggested to you has been to make very clear that all we want to do is to get at the private transactions occurring on the reservations and that we do not want to interfere in any way with the activities of the War Department, the Interior Department, the Navy Department, or any other department of the Government which may be operating on reservations.

Senator BROWN. You referred to the Association of State Attorneys General, and that brings to my mind the fact that I listened to them for about a month last winter, and it recalls to my mind the income tax. My attention was called, when this committee was first established, to the fact that certain Army officers and possibly naval officers and other Government employees living on military reservations have been, by, I believe, the opinion of the attorney general of Maryland, held to be exempt from the provisions of the Public Salary Tax Act which we passed just about a year ago. I am informed that an Army officer living within the limits of the Naval Academy is not required to pay an income tax, if Maryland has an income tax, and I think they have; while on the other hand, a naval officer living just across the street and off the reservation is required to pay the State income tax.

Assisted by our legislative counsel, I have prepared an amendment to cover that situation, and I will read it:

"No person shall be relieved from liability for any income tax levied by any duly constituted taxing authority in a State having jurisdiction to levy a tax on income by reason of his residing within a Federal area within such State or receiving income from transactions occurring or services performed in such area."

Mr. PIERCE. Of course, we have a personal income tax in California, too, so that might be helpful to us.

Senator BROWN. You do have one?

Mr. PIERCE. Yes, sir; we do. I think the majority of the States

do have personal income-tax laws now. For a while they were relatively few in number, and now——

Senator BROWN (interposing). There are about 30 now?

Mr. PIERCE. Yes, sir. For some time there were only about 18 or 19, but the number has been rapidly increasing. It would seem only fair. The only possible objection we might have would be that that would have a tendency to make the persons who are enjoying that exemption feel even less friendly toward the proposal than they do now. Perhaps Congressman Buck would like to say a word on that.

Senator BROWN. That exemption is contrary to the purpose and the spirit of the Public Salary Tax Act, which applies to everybody.

Mr. PIERCE. In fairness to the Federal personnel, the Army, the Navy, and others, this amendment may be disturbing. Some of the States have been, on occasion, a bit arbitrary about determinations of residence, and after all they are not perhaps in the same category as other persons who can go pretty much where they please and as they please. But this Government personnel is ordered to places and they have to go whether they want to or not, and they stay there as long as they are told to stay there, and no longer, and then they have to go somewhere else. If the States are, by some peculiar definition of domicile, going to attempt to tax Army and Navy personnel who are really not making their permanent residences in the States but just happen to be, for the time being, at some Army or Navy post, there might be some complication in that perhaps the State of original domicile, where the man's home was before he went into the service, might be asserting jurisdiction over his income, and also the State where he is in service. There might be some such a complication.

I think that, on the whole, the situation which you speak of is obviously one that was intended to be covered by the Public Salary Tax Act of 1939, and it certainly is unfair to the officer who lives off of the reservation to be compelled to pay the tax when he is almost exactly in the same position as the one on the reservation.

It seems to us very unfair that where a delivery happens to be made on the reservation that that particular transaction should be exempt, where another may not be. By way of illustration and in line with that, in California it frequently happens that contractors do quite a bit of work on Federal reservations as private contractors. It is quite natural that they should. They have to buy equipment for that work, but it is ordinarily not exhausted on that particular job and only kept there for a relatively short time.

Recently we had a situation in California where a contractor ordered a lot of new tractors and other equipment, much more than he needed for that job, and he had them all delivered on the reservation so that there could be no sales tax. Later he took them back into another part of the State and proceeded to use them there.

Senator BROWN. That would be covered by this law.

Mr. PIERCE. Yes. That, of course, is very unfair to a contractor who did not have the privilege of establishing his headquarters for that time on the Federal reservation.

I thank you.

Senator GEORGE. Mr. L. O. Gregory, acting commissioner of the Department of Revenue of North Carolina is the next witness.

STATEMENT OF L. O. GREGORY, ACTING COMMISSIONER, DEPARTMENT OF REVENUE, STATE OF NORTH CAROLINA, RALEIGH, N. C.

Mr. GREGORY. Mr. Pierce has covered the matter so fully that I only want to make a few remarks.

I would like to say this with respect to Senator Brown's point about process. There is almost a standardized form of giving State consent to the Federal Government to acquire lands in the States, and almost invariably that form includes a reservation of the power to serve process, criminal and civil.

Senator BROWN. Retained by the States?

Mr. GREGORY. Yes. That includes execution. I do not think there would be any difficulty about that. Furthermore, in a great many States, the power to lay taxes in these Federal areas exists by reason of some reservation, and the same situation would operate there. They could go in and levy.

I think, as Senator George said, if they have the power to lay the taxes, it would probably follow that they could collect it, but I do not think that there would be any difficulty about the collection. There would be no attempt, of course, to levy on the property of the United States or the property of an instrumentality of the United States.

I do not think that there has been any suggestion of the power of the Congress to enact this measure, and I think that is perfectly clear. It appears to me in reading the language of the bill and the committee reports, that it is clear, also, that the effect of the bill is simply to remove the objection of territoriality that has been so often made.

That objection is purely artificial. As someone has said, this doctrine has just created a mass of Federal islands in the States. The exemption is not necessary or beneficial to the United States, is harmful to the States and is exasperating to that man that lives across the street, Senator, and cannot be supported from any standpoint, it seems to me.

There are, in the western part of North Carolina, people who are engaged in the hotel business or in selling souvenirs or various things that they sell along the highways, and there will be one man over here just inside of the Federal land, and another one just outside, or they would be close together, and one would be paying all of the State taxes and the other would be paying none. The Federal Government is not interested in that matter, whether one pays or does not pay, and it seems to me that there is no justification for continuing that exemption. This bill does not affect anything but sales and use taxes, and by the amendments that have been suggested by Mr. Pierce, most, if not all, of the objections that have been made will fall down.

I would like to call attention to the fact that the United States Supreme Court has recently considered this matter in several aspects, and Chief Justice Hughes said in *James* v. *The Dravo Contracting Co.* in 302 U. S. 134, at page 147:

> The possible importance of reserving to the State jurisdiction for local purposes which involve no interference to the performance of governmental functions is becoming more and more clear as the activities of the Government

expand and large areas within the States are acquired. There appears to be no reason why the United States should be compelled to accept exclusive jurisdiction or the State be compelled to grant its consent to purchases. Clause 17 contains no express stipulation that the consent of the State must be without such reservations. We think that such a stipulation should not be implied.

The Chief Justice repeated that language in the *Silas Mason case*, decided at the same term, and in the *Collins case* in 304 U. S. That was the *Yosemite Park case*. The Court called attention to the fact that this was a matter of arrangement between the State and the Nation, and that it was not a matter that affected the sovereignty of the United States, because admittedly no tax could be laid against the United States or its activities or instrumentalities.

That the warning of the Chief Justice was well founded is shown by the fact that in the report to Congress entitled, "Federal Ownership of Real Estate and Its Bearing on State and Local Taxation, House Document No. 111, Seventy-sixth Congress, first session," it was shown that the amount of land owned by the United States in the States ranges from 82.67 percent in Nevada to 0.1 in Iowa, and that the average Federal ownership of land in the United States is 20.74 percent, and of course we know that during the last few years that more and more lands have been acquired by the United States.

Senator BROWN. I think that the theory upon which the bill is based is sound, but I think there was a time not so very long ago that a contrary view was held. If the Oklahoma oil cases involving schools was the law today, I do not think that we could pass any such legislation of this kind, but that, I think, has been overturned by more recent decisions of the courts.

Mr. GREGORY. Yes, I think that is what gave the State administrators the opportunity to urge to Congress the discontinuance of this artificial exemption which has no relation to the Government of the United States or its activities.

I think that Mr. Pierce has covered the other matters, but I would like to say that this matter of the Public Salary Tax Act which you mentioned, has come up in North Carolina. We have taken the position there that an Army officer who lives on the reservation is just as much liable as the Army officer who lives across the street, but we have not taxed any domiciliary of any other State just by reason of his presence there. We are only taxing the salaries of those who are domiciled in North Carolina, irrespective of whether they happen to be living there during the year or not.

Senator BROWN. On the reservation or not on it?

Mr. GREGORY. Yes, sir.

Senator GEORGE. Are there any further questions?

(No response.)

Senator GEORGE. Congressman Dempsey.

STATEMENT OF HON. JOHN J. DEMPSEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. DEMPSEY. I appear here at the request of Governor Miles, of New Mexico. He is very much in favor of the Buck bill, but is opposed to the amendment offered by the Senator from Wisconsin, Mr. La Follette, insofar as New Mexico is concerned, because it entirely nullifies the bill.

We have probably as much or more Indian lands in New Mexico as any other State in the Union. We have no objection whatsoever to prohibiting the sales taxes applying to Indians, but we cannot conceive of any reason why a man should move a store onto an Indian reservation to avoid or stop collection by the State of a tax when the goods are sold not to Indians but to tourists and people living in the vicinity of the reservation. And that is what is being done.

I will be glad, if the chairman will permit me, to leave for the record the telegram of Governor Miles.

Senator GEORGE. Yes. Congressman Buck read a telegram from the Governor of the State.

Mr. DEMPSEY. Then probably it is the same, because this refers to a letter from Congressman Buck, and I assume it would be the same.

We have one county in New Mexico, McKinley County, bordering on Arizona, and there are scarcely any lands in that county, except the city of Gallup, that are not Indian lands. The Indians pay no tax whatever. We have on the tax rolls of New Mexico only 37 percent of the total area of the lands. The Government is constantly purchasing additional lands for the Indians, and frankly, I am somewhat concerned about the effect on our State. If we are going to be deprived of taxes by subterfuges such as exist now, with all of these people moving on Indian lands in order to escape taxation, it is a matter of deep concern.

As I say, we have no desire to tax the Indians. They are exempt from taxation in our State, but we do not believe that because a man establishes a store on Indian lands competing with a store outside, the store inside should be exempt from all taxation, and the store outside should pay.

Senator BROWN. Does the Indian who runs a store pay taxes?

Mr. DEMPSEY. The Indian does not run the store. The proprietors of the stores are whites, and not Indians. I do not recall a single store being run by an Indian except recently there has been a cooperative established among the Jicarilla Indians where they bought out an old white trader, and that has happened in the past few months; but aside from that one I do not know of a single instance of an Indian owner of a store on an Indian reservation.

Senator BROWN. But if he did run a store, he would be subject to the same sales tax as levied by the State upon a white storekeeper?

Mr. DEMPSEY. If an Indian operated a store outside of the reservation he would then be required to pay the sales tax, which is 2 percent, as are all other owners of stores in New Mexico. If, however, he has a store on Indian land, notwithstanding that he can sell anything in that store that he desires to sell, not Indian crafts, but foodstuffs, or anything of that kind, he is exempt.

Senator BROWN. On sales to anybody?

Mr. DEMPSEY. To anybody. We have just completed an 80-mile road through the Navajo reservation to get to Colorado, and not 1 cent was contributed by the Federal Government. It was entirely through Indian lands. The public comes into the Indian reservations and buys and avoids the State tax.

Under the rehabilitation program, the Federal Government has acquired over a million acres that had been on the tax rolls and

turned the land over to the Indians. I am quite certain that the Senator from Wisconsin had in mind exempting the Indians from the sales tax, and that he certainly did not have in mind exempting me from the sales tax if I went over to the Indian reservation to buy goods, in order to avoid paying the 2-percent sales tax. This State sales tax is supposed to be paid by the consumer, not by the store owner, who merely collects it for the State.

Senator GEORGE. You may put in the record, if you desire, the telegram from the Governor.

Mr. DEMPSEY. Thank you, Mr. Chairman.

(The same is as follows:)

Hon. JOHN J. DEMPSEY,
Representative from New Mexico,
House Office Bldg.:

I have just sent the following day letter to Hon. Frank H. Buck. This acknowledges your letter April 10th. New Mexico is primarily interested in passage of House Resolution 6687 as originally introduced by you. Amendment offered by Senator Robert M. La Follette in behalf of Department of Interior exempting Indian reservations from the provisions of your original resolution practically nullifies the purpose of your bill insofar as New Mexico is concerned. There is common practice in New Mexico by which merchants who would normally be taxable are able to avoid State taxation by locating their business operations on Indian reservations. I speak for New Mexico and in particular the sales tax division of the New Mexico Bureau of Revenue in urging passage of House Resolution 6687 as originally introduced by you. If possible I would like this telegram to be entered into the record of the hearing scheduled for Tuesday, April 23. I have also sent a similar telegram to Hon. Walter F. George, chairman of the subcommittee who will conduct the hearing. I will appreciate any effort you can put forth that will further bring this matter to the attention of Congressman Buck and Senator George.

JOHN E. MILES,
Governor of New Mexico.

STATEMENT OF J. W. HUSTON, SUPERVISOR OF THE DIVISION OF RESEARCH AND STATISTICS, DEPARTMENT OF FINANCE, STATE OF ILLINOIS, SPRINGFIELD, ILL.

Mr. HUSTON. I am appearing on behalf of the Department of Finance of the State of Illinois to urge favorable consideration of H. R. 6687, and the general outline has been so ably given by Mr. Gregory and Mr. Pierce and the other gentlemen that I won't take your time other than to present the views of the State Department of Finance and of certain private businessmen who are very much interested in the early enactment of H. R. 6687.

Congress attempted to remedy the situation of Federal exemptions by passing in 1936, section 10 of the so-called Hayden-Cartwright Act. However, the State of Illinois has not been able to take advantage of this act even insofar as its motor-fuel tax is concerned. The Illinois motor-fuel tax being technically imposed on the privilege of using motor fuel on the public highways apparently does not come within the strict language of the Hayden-Cartwright Act which relates only to taxes imposed on sales of motor fuel.

Nevertheless, certainly no one can question that the intention of Congress was to extend the benefits of the Hayden-Cartwright Act to all States equally, regardless of the technical form their motor-fuel tax laws might take.

There has been some testimony about the change in the concept of governmental immunities in the last few years, and I believe the

existence of the present tax immunity for certain transactions simply because they occur in whole or in part on a United States Government reservation is a legal anachronism. The existing situation is out of line with all recent judicial and congressional pronouncements, which have uniformly recognized the unfairness of private tax immunity under the cloak of governmental privilege.

Gasoline retailers located near Government reservations in Illinois have long complained to the Department of Finance that the tax-free sales of motor fuel on such reservations for private use constitutes an unfair competitive situation. That these complaints have substance is illustrated by the following letter from the Secretary of the Illinois Petroleum Marketers' Association to the director of finance. I will simply read excerpts from this letter, which is addressed to the Honorable S. L. Nudelman, director of finance of the State of Illinois:

My attention has been called to the fact that H. R. 6687, introduced by Mr. Buck of California, has been referred to a subcommittee of the Senate Committee on Finance, having passed the House of Representatives.

The following resolution concerning H. R. 6687 has been adopted by the Illinois Petroleum Marketers Association:

"Whereas, through enactment in 1936 of section 10 of the Hayden-Cartwright Act (49 Stat. 1521; 23 U. S. C. A., sec. 55a) the Congress of the United States recognized the fairness of requiring payment of State motor-fuel taxes with respect to motor fuel sold on Federal reservations in competition with motor fuel sold off said reservations; and

"Whereas it manifestly was the intention of Congress, by passage of the said section 10 of the Hayden-Cartwright Act to remove unfair competition in every State of the Union, by providing for the equal taxation of all motor fuel sold within the geographical boundaries of a State; and

"Whereas because of a technicality the benefit of the said section 10 of the Hayden-Cartwright Act has been denied to retailers of motor fuel in the State of Illinois; and

"Whereas H. R. 6687, introduced at the Seventy-sixth Congress, first session, by Hon. Frank H. Buck, Member of the House of Representatives for the Third Congressional District of California will correct the present unfair situation as it applies to the State of Illinois; and

"Whereas, said measure has been passed by the House of Representatives and is now before the Senate of the United Statss: Now therefore be it

Resolved by the Illinois Petroleum Marketers Association, That this association does hereby endorse said H. R. 6687 and commend said measure to the favorable consideration of the Members of the Senate of the United States to the end that the early passage of this legislation may be assured—

et cetera.

And the letter concludes:

On behalf of the Illinois Petroleum Marketers Association, I am writing you to suggest that the Illinois Department of Finance, as the agency responsible for enforcing the Illinois Motor Fuel Tax Act, should take all possible steps toward obtaining favorable consideration of the said H. R. 6687 by the Senate of the United Statees.

Very truly yours,

ILLINOIS PETROLEUM MARKETERS ASSOCIATION,
(Signed) G. A. PRIMM, *Secretary*.

While the Illinois Department of Finance is vitally interested in relieving the situation complained of by retailers of motor fuel, it also naturally desires to protect the State's legitimate revenues. We have observed with alarm the substantial amount of taxes which Illinois is losing by reason of the present unjustified exemption of transactions occurring in whole or in part on Federal reservations in our State.

For certain periods of varying length the commanding officers of three reservations reported motor-fuel tax collections to the Department of Finance under the terms of section 10 of the Hayden-Cartwright Act. They were subsequently advised by their superiors that this act does not cover the type of tax imposed by our Motor Fuel Tax Act. But from their reports it is possible to estimate the amount of motor-fuel tax lost during a year from these three reservations alone, as follows:

Reservation	Average monthly payments	Estimated yearly payments
Fort Sheridan	$797	$9,564
Chanute Field	600	7,202
Great Lakes	374	4,493
Total annual motor-fuel tax loss		21,262

In addition to the above loss of motor-fuel tax, retailers' occupation (sales) tax on such gasoline sales would amount to at least $2,550 per year additional, even taking a low average price of 12 cents per gallon for a base. It is thus possible to estimate that Illinois now loses at least $23,800 annually on account of gasoline only, sold on the above three reservations.

That this amount does not begin to represent the sum lost by the present exemption is evident for the reason that it does not include retailers' occupation tax on anything but motor fuel, and that the reservations noted are only 3 out of 10 major Federal reservations located in Illinois, to say nothing of the hundreds of smaller Federal areas scattered throughout the State.

You are no doubt aware that under the United States Supreme Court decision in the case of *Standard Oil Company* v. *California* (291 U. S. 242), any sales of tangible personal property, even to a person not in the Government service, can be claimed exempt if delivery is made by the seller to the buyer at a point on Federally owned real estate. For example, this decision would logically enable any person to avoid a sales tax by accepting merchandise on Government-owned territory—even the post-office steps. While the Illinois Department of Finance has insisted upon taxing such transactions unless delivery is made in the regular course of the seller's business to a person residing upon Government territory, there is no guaranty that the courts would uphold this position in view of the *Standard Oil case*, and unless H. R. 6687 becomes law.

In any event, there is no good reason why even persons fortunate enough to reside or work upon Federal reservations or in Government buildings should be privileged to purchase merchandise on a tax-free basis. Certainly they receive the benefits of State government and the protection of its laws; they use its highways and send their children to its schools. They, who live upon the taxes our people pay, should be willing to accept the obligations of citizenship.

It is both a matter of revenue and it is a matter of fairness in Illinois particularly, because we have been denied the benefits of the Hayden-Cartwright Act.

Senator GEORGE. Mr. P. M. Minus of South Carolina.

STATEMENT OF P. M. MINUS, DIRECTOR, LICENSE TAX DIVISION, SOUTH CAROLINA TAX COMMISSION, COLUMBIA, S. C.

Mr. MINUS. I do not have anything additional to add to that which has already been said, and I shall not burden you with any repetition of the facts presented by these other gentlemen. However, if there are any questions in connection with the practical application of the taxes levied, I shall be glad to try to answer same, as I am administrator of the indirect taxes in South Carolina.

We have several Government reservations in the State, among them being Parris Island and the Navy Yard in Charleston, upon which the State is losing considerable revenue. We have a tax on all tobacco products that is levied on the sale of such products in the State and on these Government reservations the civilian personnel of the Navy yard and Parris Island are permitted to purchase goods without payment of the tax. Many of the civilians employed live without the reservation and make purchases of tobaccos and carry these goods in to their friends, or members of the family, sometimes to places of considerable distance. Naturally, the merchants who are competing with the Government post exchanges complain to our department. For this reason, we are heartily in favor of the passage of this bill.

Senator GEORGE. Are there any questions, Senator Brown?

Senator BROWN. No.

Senator GEORGE. Thank you.

Mr. Say, would it be agreeable to you if we hear now from some of the representatives of the various departments, and then after they have concluded, we will hear from you?

Mr. SAY. That is entirely agreeable.

Senator GEORGE. Is that agreeable to you, Mr. Buck?

Mr. BUCK. Entirely agreeable.

Senator GEORGE. Then I will ask Lieutenant Commander Russell to make a statement.

STATEMENT OF LT. COMDR. GEORGE L. RUSSELL, OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE NAVY, NAVY DEPARTMENT

Senator GEORGE. Are there other spokesmen for the Navy here?

Lieutenant Commander RUSSELL. Yes, sir.

Senator GEORGE. And they desire also to be heard?

Lieutenant Commander RUSSELL. Some of them, perhaps, can answer some of the questions better than I, Mr. Chairman. My idea is to present the statement, and if there are any questions that I cannot answer, if I can call on someone else to answer them, that might expedite the hearing.

Senator GEORGE. Please proceed, and we will hear from the other officers present also.

Lieutenant Commander RUSSELL. This bill is most objectionable to the Navy Department. The reasons therefor, but not necessarily listed in order of importance, are—

(*a*) The language of the bill is indefinite.

(*b*) Federal criminal jurisdiction will be impaired.

(c) It will impede and interfere with essential Federal functions.
(d) Not only will Federal officials be burdened by its provisions; these provisions are not susceptible of uniform regulation by executive departments of the Government.
(e) It authorizes the levy of taxes on the low-income groups in the Navy by States and territories which deny to them civil and political rights and benefits. Effect on morale will be felt accordingly.

Specific objections under the foregoing are as follows:

The text of the bill is so broad in its terms that its full effect will necessarily be subject to interpretation, and it is susceptible of a construction which would allow sales and privilege taxes upon such Government instrumentalities and essential functions as commissary stores, ships service stores, post exchanges, and restaurants or cafeterias. The line of demarcation between what is to be taxed and what is not to be taxed is not clear. The Navy Department cannot believe that it was intended, for example, to place a tax on uniforms, clothes, shoes, or other articles of wearing apparel sold an enlisted man by the Government. Also, the meaning of the words "levied and collected in the same manner and to the same extent, and so forth" would imply that State officials are to be clothed with authority to enter naval reservations and require those in authority there to comply with State tax law, under penalty of arrest and punishment. In other words, the authority of local taxing officials is not circumscribed in any way except by State laws. Any State or Territory, therefore, will be enabled to vary the effect of such a bill as this by changing its own laws. Such action is not necessarily anticipated, but any legislation which would permit it constitutes a surrender of Federal prerogatives to State authorities. The Navy, as a branch of the Federal Government, objects to being placed at the mercy of State legislatures in this respect.

To the extent that the bill vests concurrent jurisdiction in the States and Territories over Federal reservations, it would correspondingly terminate the exclusive jurisdiction of the United States over such places. For this reason, it is suggested that this bill, if enacted, might have the undesirable consequence of making the United States Criminal Code unenforceable insofar as concerns the punishment of crimes—

when committed within or on any land reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof * * * (18 U. S. C. 451, 468, 511).

Senator BROWN. I recall that point having been made once before. Do you think it is impossible to cover that matter of exclusive jurisdiction by an amendment to this particular act?

Lieutenant Commander RUSSELL. No, sir; the amendment would have to make the jurisdiction concurrent everywhere; otherwise, that particular section of the United States Code would automatically——

Senator BROWN (interposing). I see no reason why we cannot amend the Criminal Code in that respect to strike out the meaning of that phrase "exclusive jurisdiction." I think you make a good point, but I think we could cover it by appropriate language.

Lieutenant Commander RUSSELL. As you know, Senator, the phrase "exclusive jurisdiction" has been interpreted rather in an elastic manner. It does not mean exactly what you might think.

Senator GEORGE. The Attorney General has suggested an amendment on this question of jurisdiction. Undoubtedly he intends by this amendment to clarify that issue. I do not know whether you happen to have seen his suggested amendment.

Lieutenant Commander RUSSELL. I have not. I am coming to that very point.

Senator GEORGE. The Attorney General suggested this amendment:

Provided, That the provisions of this act shall not be construed as in any way divesting the United States of its exclusive jurisdiction over any of the foregoing lands, or as precluding the acquisition of exclusive jurisdiction over lands hereinafter acquired by the United States, for the purposes of the provisions of section 5339 of the Revised Statutes.

I thought that I would call your attention to that suggested amendment. You may proceed.

Lieutenant Commander RUSSELL. Crimes by naval personnel on Federal reservations, other than murder, can always be adequately prosecuted by courts martial whose jurisdiction would remain unaffected by the bill. Thousands of civilians, however, are employed at naval reservations, and other persons not in the Government service, including even possible trespassers, have occasion to enter such places. These civilians may commit crimes thereon, and it is therefore of importance to the Navy that no legislation be enacted which might directly or indirectly exempt such offenders from trial and punishment by the Federal courts, more especially as they would not in any event be amenable to State jurisdiction.

This situation can, of course, be corrected by the amendment of all criminal laws on the subject. Unless this is done first, however, the result will be an impairment of exclusive jurisdiction and resulting "no man's lands" where crimes could be committed with impunity.

Under the language of the bill, the taxes levied by the various States and Territories may be collected in the same manner and to the same extent on naval reservations as in the jurisdiction levying the taxes. Under almost any of the laws now in effect in States and Territories, compliance therewith would constitute a direct interference with Federal activities. Such laws usually require the submission of various reports, and in some cases the collection, accounting for, and remitting to the State the money represented thereby; and they frequently provide for inspection, audits, and production of books and records under such regulations as local officials may prescribe with penalties of fines or imprisonment for failure to comply therewith. Naval officials and employees would thus be required to assume duties and responsibilities which would seriously interfere with their regular duties and place the Navy in the position of being without authority to exercise complete control over them.

The foregoing would not only burden Federal officials, as described. The laws of the States and Territories on the subject of such taxes as would be permitted by this bill are many and varied. Conflicts of duties owed to the Federal and local governments will be unavoidable, in the minds of naval officials, who, the Navy Department believes, should not be required to familiarize themselves with the details of local tax laws and accompanying rules and regulations. Moreover, the Navy Department could not issue regulations calling for uniform performance of these extra duties, because of the complexity of the various local laws.

I would like to emphasize that point. That is a very true statement. It would be an erroneous undertaking to try to write a regulation that would cover them all.

It has occurred to the Navy Department that the imposition of [illegible] burdens visualized might well result in being held unconstitutional. Until the point could be decided, however, the experience of the Navy Department dictates that local taxing agencies will exert every effort to enforce their local laws to the limit, and that endless vexations and frictions will be generated between Federal and State authorities. In this respect the Navy Department speaks with considerable feeling, having only recently been engaged in disputes because certain jurisdictions have sought to impose, or have imposed, taxes as follows:

We had a case in New York City where hydrographic office charts and publications were taxed by the municipality. Those charts and publications are by law required to be sold at a price not to exceed the cost of production. There was a firm in the city of New York dealing in nautical instruments and supplies, and so forth, which, as a convenience to its customers carried a supply of charts, and the Navy Department did not think that they should be subjected to sales taxes. We felt that these charts and publications were just as much a Federal object as is anything that you can think of. They might just as well tax a money order or a postage stamp. However, they did tax them, and the person running the store did not care to spend the money to defend a suit, and it ended there.

Senator BROWN. He bought them from your office?

Lieutenant Commander RUSSELL. Yes, sir.

Senator BROWN. And he sold them at the same price to his customers?

Lieutenant Commander RUSSELL. Yes, sir.

The second case that I have in mind involved the putting of an occupation tax on a chief petty officer of the Navy who was on recruiting duty in Philadelphia. We are still arguing that case. We do not think that is right.

Senator BROWN. Will you explain that a little further?

Lieutenant Commander RUSSELL. We have a chief petty officer in the Navy who was ordered to the city of Philadelphia on recruiting duty, and the effort was made to make him pay an occupation tax. If that is not a direct interference with the Federal Government, we do not know what would be.

Senator GEORGE. He would not be affected by this bill.

Lieutenant Commander RUSSELL. No, sir. This is to illustrate——

Senator GEORGE (interposing). What you fear may happen under this bill?

Lieutenant Commander RUSSELL. What we are afraid will happen until the courts decide it.

Then we had another case where there were some navy-yard workmen from Puget Sound who were sent up to Alaska to help build a naval air station, and while they were there they were assessed a $5 school tax, even though their families were not there and they had no children in the school, but the local law said that they had to pay it and so they did. Legally that was, perhaps, all right, but not equitably the way we looked at it.

There are numerous other cases.

It has long been recognized that naval reservations, including navy yards, arsenals, ammunition depots, air stations, and the like, over which the United States acquired exclusive jurisdiction, are not politically a part of the States or Territories in which they are located. Likewise, persons in the employ of the United States actually residing within the limits of Federal reservations do not possess the civil and political rights of the citizens of the States in which located. (See 6 Op. Atty. Gen. 577, and cases cited therein.)

Senator BROWN. How does that differ from me going to Florida on a trip down there, either for business or pleasure, and being required to pay the Florida sales tax?

Lieutenant Commander RUSSELL. If you were a visitor in Florida, you would not expect to be a voter in that State.

Senator BROWN. That is true, but I retain my voting right back in Michigan, and your man retained his voting right some place, but I am subjected to the occupational tax and sales tax, and so forth, even though I am not a legal voter in Florida.

Lieutenant Commander RUSSELL. That is correct.

Moreover, nearly all States deny these rights to naval (and military) personnel not only when actually residing on Government reservations but also when residing in the State outside the reservation in consequence of having been ordered to that station for duty. They are classed as nonresidents, and being so classified, they are required to pay fees charged nonresidents for the privileges of educating their children in State schools.

Somebody brought that question up here a moment ago. I have a pamphlet here that is quite complete on the subject, but there are numerous States which have written in their constitutions a prohibition—perhaps that is not the right word—they describe the personnel of the naval and military services as nonresidents, and that automatically denies the individual a great many of these benefits. I just took a few cases out at random.

For instance, at the University of California, it does not cost anything for a resident to attend. However, if he is a nonresident, it costs him $150. Similar situations are true in Florida and Virginia, Massachusetts, and, incidentally, in Michigan and in Georgia.

To subject naval personnel when on naval reservations to the taxes this bill would authorize (and it is to be remembered that the same personnel pay these taxes outside the reservation the same as anyone else) seems to the Navy Department unjust, particularly so when they are denied any right or say in the imposition of the tax or how it is to be spent. It permits the States to impose double taxation when Navy personnel have to pay all taxes and such charges as nonresident school fees in addition. This is a discrimination against naval personnel—and in communities that depend on the Federal pay rolls for much of their revenue, and although the Federal Government gives large sums in direct gifts of public moneys to the various States for roads and other items such as set forth in House Document 111, Seventy-sixth Congress.

The purpose of that information that was compiled in House Document No. 111 was to show that the direct aid to the States greatly outweighs any loss in taxation. There is no comparison,

I venture to say that you would not find many States who would be willing to give up the right to direct aid to get back the right to tax this property.

A most important effect of this proposed legislation is its interference with essential activities which the Navy employs, as aids in the development of character, physique, contentment, discipline—those things which go to make up what is classified as morale or esprit de corps, and without which no fighting unit may successfully function.

The Navy has to develop, from young recruits, strong, healthy, self-respecting men, proud of themselves, the Navy, and of their country, capable of standing physical and mental strain, of abiding by rules and regulations without inward resistance, and capable of resisting subversive activities of various sorts.

The Navy does this by education, training, and indoctrination; by requiring of its men personal cleanliness, a smart military appearance with properly fitting uniforms; by encouraging athletics, and by providing recreation and relaxation from its many drills and exercises. These naval personnel are in the low income groups, their pay on entering being $21 per month.

The ships service stores and associated activities contribute directly to these essential naval functions, because they provide the money by which services and equipment are made available to the men. Ships service activities are cooperative affairs and do not involve expenditures from naval appropriations.

Senator BROWN. For instance, when a midshipman from Annapolis goes to a tailor shop down there, does he pay the Maryland sales tax?

Lieutenant Commander RUSSELL. I don't know; I cannot answer that. However, the Naval Academy would not come within this particular thing I have in mind. I am referring more particularly to the places like training stations where we have a large number of recruits. There is a continuous turnover, and the Navy tries to keep these people off the streets and out of trouble, and they don't get much money, so some years ago we decided to try to entertain them on the reservation and that costs money. We have all sorts of things, such as movies.

From the sale of such items as cigarettes, tobacco, candy, ice cream, milk, and other soft drinks, funds are obtained for the purchase of athletic equipment and the operating expenses of bowling alleys, poolrooms, transportation and expenses of athletic teams, reading and club rooms, motion pictures and equipment, and so forth. These funds are also used to purchase equipment for services such as tailor shops, shoe-repair shops, barber shops, and laundries, all of which are operated at a very low cost for the benefit primarily of our enlisted men whose pay is such that they cannot afford to pay ordinary prices from Government stores was a factor in fixing the pay point out that the ability of naval personnel to purchase at cheaper prices from Government stores was a factor in fixing the pay schedule in the last service-pay bill.

That point was covered, and somebody brought up the question, "Don't you save money by being able to trade at some of these

places?" and the answer was, "Yes," and the result was that the pay schedule was fixed lower than it otherwise would have been.

Ships service activities are very closely regulated and supervised and funds thus used for the benefit of our men should not be disturbed. Any tax imposed will necessarily fall principally upon our enlisted men who can least afford to pay taxes, for the great bulk of the sales and users of ships service activities are enlisted men.

Senator BROWN. Who buys the uniforms, for the marines, for example? Do they pay for it themselves, or does the Government buy them?

Lieutenant Commander RUSSELL. I cannot answer that question specifically. Can you answer that, Colonel Curtis?

Lieutenant Colonel CURTIS, U. S. Marine Corps. They have an allowance. If they go over that allowance, then they have to buy the uniform themselves.

Senator BROWN. I notice that the second amendment which was read by Mr. Pierce says this:

> Nothing contained herein shall be construed as authorizing the levy or collection of such taxes upon or with respect to any transaction in which said property is sold, purchased, or used by the United States or an instrumentality thereof.

Do you think that would cover any of the objections that you are raising here? Possibly some of them, but not all.

Lieutenant Commander RUSSELL. Possibly some of them. But take the case of a man who buys a white cap in a service store. It would not cover him.

Senator BROWN. It would seem to be that if the Government bought a uniform for a member of the Marines, that he would not now be taxed.

Lieutenant Commander RUSSELL. No, sir.

Senator BROWN. And I do not see why he should be taxed if, because of certain circumstances, he is required to buy it himself. It seems to me that he should not be taxed.

Lieutenant Commander RUSSELL. I do not think he should, either.

Senator BROWN. I did not understand that that was the purpose and the intent of this bill. I thought it principally applied to sales on the reservations to persons who were not connected with the Government services, such as the Navy or the Army, and that it also should apply to the nonessential or nonnecessities that they bought.

Lieutenant Commander RUSSELL. Several gentlemen have appeared here this morning and said that that was not the intent, but we were looking at the possible effects of the bill as it is worded, and we are afraid that this is what would result. The intentions might be of the best, but if the bill is not clear, it does not help us.

Senator BROWN. I think if a Navy man buys a $5 bouquet, if he can afford it, to send to his sweetheart, that he ought to pay a tax on it, but I think if he buys a hat for himself which is required by the regulations that he ought not to pay a tax. I do not say that that is my final conclusion, but it seems to me that that is a just way to discriminate between the two, and it certainly seems to me that if I, as a civilian, go to Parris Island, if there happens to be a store there and I go in and buy a pound of coffee, that I ought to pay the South

Carolina tax on that, just the same as if I bought it in a store off the reservation.

Admiral RAY SPEAR, Paymaster General of the Navy. May I say just a word on that? The Navy excludes all civilians from our ship and household stores. The impression was given by the gentleman from South Carolina—he gave the impression to me, at least—that those civilians had the privilege of buying in a commissary or ship's store. That is not correct; it is confined exclusively to the personnel.

Lieutenant Commander RUSSELL. The Navy Department opposes any tax that will increase the costs of such services and activities, or in any way interfere therewith. If it were not for the ship's service activities, the Navy Department would be compelled to ask for appropriations to assist in accomplishing its objectives in building a high morale.

I would like to elaborate on that statement a little bit. These activities, as I have said, are cooperative. The idea is to make just enough to be self-supporting and to sell things at a very small profit; in other words, we feel that we are doing the thing just right and we would like very much to be left alone in this particular respect. The effect of the loss of taxes is going to be negligible.

Under this bill, sales, privileges, and other taxes may be levied and collected upon the operations of cafeterias and restaurants, established or permitted in our navy yards and stations, for the use, convenience, and benefit of civilian employees. These cafeterias and restaurants are operated either under cooperative or concession systems, under the supervision of the Commandants, and the prices are kept very low. Any taxes assessed will fall almost entirely upon our civilian laborers, mechanics, and clerks who are in the lower-pay groups. The Government obtains much benefit by having means available whereby such civilian employees may obtain a hot meal at low cost. This benefit is reflected in better work, greater output, more contentment, and less industrial unrest, matters of great concern in our large industrial yards and plants, employing, as they do, thousands of men. These cafeterias or restaurants serve essential Government functions with which the taxes authorized by this bill will interfere.

The situation in the foregoing respects would be complicated in time of war, at which time, if the experience in the last war is any criterion, such patriotic organizations as the Red Cross, Salvation Army, Knights of Columbus, and others may be expected to establish themselves at naval training stations and at the other reservations for the purpose of keeping up morale. These activities would, under the bill, be confronted with the necessity of complying with tax laws and regulations, in spite of their altruistic and patriotic motives.

This bill is readily distinguishable from the Hayden-Cartwright Act involving the sale of gasoline.

The Hayden-Cartwright Act is a Federal responsibility being put on a Federal officer by the Federal Government. He is responsible to no one else; he is not responsible to the States, and I think someone this morning said that they went on these reservations and collected the money. I do not like to contradict anyone, but it is my understanding that those checks are just mailed out and that is all there is to it.

But this proposed legislation is a different thing, because this makes a naval officer at a naval station answerable to the State.

Senator BROWN. This Pierce amendment says that it shall not apply where any such property is sold by the United States or any instrumentality thereof. If that means what it says, it means there would be no tax levied upon a post exchange conducted by an Army or Navy man. Is that right, Mr. Pierce?

Mr. PIERCE. I think so, except as I said, there may be some question as to what is a Government instrumentality. Perhaps the Commander would enlighten the committee.

Senator BROWN. This is not in the bill.

Lieutenant Commander RUSSELL. A ship's service store is a Government instrumentality and has been so held.

I think that is about all I have to offer, Mr. Chairman.

Senator GEORGE. Are there any further questions, Senator Brown?

Senator BROWN. No questions.

Senator GEORGE. Colonel Curtis.

STATEMENT OF LT. COL. DONALD CURTIS, REPRESENTING THE UNITED STATES MARINE CORPS

Lieutenant Colonel CURTIS. General Holcomb expected to be here, but he could not come down.

I have nothing to add particularly to what Mr. Russell has said except to emphasize with respect to the post exchange.

Senator GEORGE. You say that the Court of Claims has held the post exchange to be a Federal instrumentality?

Lieutenant Colonel CURTIS. Yes, sir; the Court of Claims in 1902 held that a post exchange was a Government instrumentality. That was with reference to a case brought by Benjamin G. Woog, who was an officer in the Marine Corps stationed in Guam, and there was a shortage and he tried to bring a claim to recover that shortage, and the Court of Claims held that it was a Government instrumentality.

Senator GEORGE. Does a post exchange sell to civilians or people outside of the Government?

Lieutenant Colonel CURTIS. No, sir; it is for the benefit of enlisted personnel and officer personnel, and each post exchange has a set of regulations which requires them to sell only to officers and enlisted men.

Senator GEORGE. Is that true of commissaries?

Lieutenant Colonel CURTIS. I do not know about commissaries or ship's service stores.

Lieutenant Commander RUSSELL. It is also true of them.

Lieutenant Colonel CURTIS. I would like to point out the benefits that we derive from the post exchanges.

Men get toilet articles, soap, candy, and ice cream, at a very reasonable price. The profits that we make go right back to the men for athletic equipment, movies, and so forth. We bring athletic teams down to play the local teams; in other words, recreational facilities.

In a place like Quantico in Virginia, they are about 35 or 40 miles from Washington, they are 4 miles from the road going from Washington to Fredricksburg, and they are a very isolated post, and in

Quantico we have, I should say, around 3,000 men. I think it might be brought out with regard to Quantico about the school situation.

We have a school there with 280 students, 65 percent of whom are enlisted men's children. The State of Virginia this year gave nothing toward the upkeep of that school. The Federal Government provided approximately $24,000. Up until this year the State has given some, but this present year it stopped. It seems to me that in imposing taxes, there should be some benefit derived by the person that pays the tax. A person living on a military reservation does not derive a great deal of benefit from a tax that is used outside of the reservation, such as the improvement of sidewalks or lights, or anything of that nature. I cannot exactly see how this is nondiscriminatory.

That is about all I have to say.

Senator GEORGE. Thank you very much.

Is there someone else representing the Army or the Navy?

STATEMENT OF MAJ. JOEL F. WATSON, OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE ARMY, WAR DEPARTMENT

Major WATSON. I may say that I have no prepared statement; in fact, I am not authorized to make any statement other than what is contained in the report by the Secretary of War to this committee upon he bill, and I will be very glad, if the committee desires, to read that statement, which is not very long.

Senator GEORGE. We would put that report in, anyway, Major, but you may read it if you desire, and make such comments as you wish to.

Major WATSON. The general effect of the proposed bill would be to eliminate the boundaries of Federal areas as jurisdictional barriers to non-Federal taxes upon or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by the sale, purchase, or use thereof. Such legislation would enable State taxes to be leview and collected with respect to transactions in areas otherwise under the exclusive jurisdiction of the Federal Government to the same extent as if the transaction took place outside of such areas but within the exterior boundaries of the State within which the Federal area is located.

The War Department is not opposed to what is understood to be the primary purpose of the bill, namely, to enable the State to tax sales which at present are exempt solely on the ground that the State lacks territorial jurisdiction over the Federal reservations or areas within which such sales are consummated. However, it is desired to comment on certain phases and possible effects of the proposed measure which are considered objectionable.

The jurisdiction proposed to be granted to the various States might be deemed of such substantial character as to terminate the exclusive jurisdiction—with the committee's permission, I will pass over that, because that was taken up heretofore and discussed.

Usually sales, privilege, and other taxes of the kind described in this bill are required by the taxing agency to be collected, accounted for, and paid by the seller who in turn may collect and in some instances is required to collect the amount from his customer either

as a part of the sale price or a separate added item as in the case of the California retail sales tax. Thus, a State tax might be so levied that it would be held to be a tax upon the individual making the purchase and taking delivery at a military post. The purchaser, if this bill is passed in its present form, would be liable to pay the tax, but the burden of collecting, accounting for, reporting, and paying it over to the State would be imposed upon the Federal agency making the sale. That, too, without regard to the Federal agency character of the seller.

State laws usualy require that the books of the collecting agency shall be open to inspection and audit and must be produced upon call of the representative of the taxing authority.

Senator BROWN. Are you talking about an agency of the Government that is prohibited from selling to civilians?

Major WATSON. Yes, sir; I am talking about agencies that we regard as essential service agencies.

Senator BROWN. And confining their sales to persons directly in the Federal service?

Major WATSON. Yes, or directly connected with the military service. It is easy to see that requirements of this nature might impose a very substantial burden upon and interference with Federal personnel and Federal agencies in the performance of their Federal functions. It would be impracticable, if not impossible, for the War Department to formulate a uniform system for collecting, accounting for, and paying over these taxes since the laws levying sale and use taxes are not the same in the various States. A uniform system would be particularly necessary for guidance on small posts where competent help may not be available. Even though it might ultimately be held that Federal agencies are exempt from such duties on the ground that their performance would impose an unconstitutional burden, the probable result of the bill as to this phase would be to promote extensive litigation, as every effort would probably be made by State authorities, pending a decision by the court of highest resort, to enforce as against such agencies the requirements for collecting, accounting for, and paying over the taxes in question, since without the provision for collection and payment by the seller, taxes of this nature cannot readily be collected.

I might say in that connection as to this matter of litigation, that there is a widespread difference between the States and the Federal Government, so far as my knowledge goes, as to what constitutes a Federal instrumentality that would legally be exempt from interference or a burden upon its functions, and that issue extends to post exchanges, notwithstanding the fact that the Court of Claims in the *Woog case*, just referred to by the gentleman who proceded me, has held the post exchange to be such an instrumentality. But that issue has never been passed upon by the Supreme Court of the United States. As Mr. Pierce said, it was passed upon in a case in South Carolina, in an analogous situation, with reference to the C. C. C. camp exchanges, which are quite similar, as nearly identical as they could be and not be in the Army, with our post exchanges. A three-judge Federal court held that they are Federal agencies not subject to a license tax that was sought to be imposed on them in South

Carolina, and that without any reference, of course, to any question of territorial jurisdiction, because they are not on Federal reservations. So that was really the only issue involved, but that case was not taken to the Supreme Court of the United States, and the Supreme Court has not passed upon the question, as far as I know, up to the present day.

However, I may say that the War Department, and I think the Navy Department and other departments, perhaps—but I speak only for the War Department, of course—have consistently treated the post exchanges and similar activities on their reservations, including unit funds, and of course sales commissaries, which are operated directly by the Federal Government, and sell goods purchased from Federal appropriations, with an allowance for replacement, of course—a revolving fund—all as Federal agencies.

This question becomes an issue here, particularly under this bill, because once you remove the jurisdictional barrier of location on a reservation, you bring to the front this other issue, and it is the hope of the War Department and the view of the War Department that this bill should be so amended as to remove that issue with its attendant, we think, multiple litigation and extensive litigation.

This bill would permit the levy of a State tax upon the use of property within military reservations not politically a part of the State. No sound reason is seen why any tangible personal property should be subject to State taxation with respect to its use upon a reservation which is not politically a part of the State, does not in general receive the benefit and protection of its laws, and is not subject to the exercise of its police power. Under this bill a soldier might, under the State law, be taxable for a radio, for example, used by him on a military reservation even though he brought the instrument into the reservation from another State and it was not purchased and never had a situs in the State levying the use tax. In general, the functions and benefits of State government, for which the individual ordinarily pays in taxes to the State, do not extend to military posts. They are self-sufficient communities, maintained and regulated by the Federal Government, which furnishes police and fire protection, medical and sanitary inspection and regulation, and constructs and maintains streets and roads, and regulates traffic thereon. Since the State is not put to any expense for these activities on military posts, no logical basis is seen for extending State taxes to cover the privilege of using property within a military post.

This bill would permit the taxation of sales to enlisted men and thus would materially reduce the purchasing power of the lowest-paid class of personnel in the Government service, namely, the private soldier drawing $21 per month.

The gentlemen representing the Navy have expanded somewhat on that question, and I won't go into it in detail except to say that our problems in that connection and our objectives are substantially the same as the Navy's with reference to enlarging the, you might say, purchasing power of our low-paid personnel and giving them the benefit of local purchases on their own post of the things which go to increase their comfort and their happiness and their efficiency.

Senator BROWN. I have heard the statement made that the benefits of State governments are not given to military posts. There are things done by a State government which are of benefit to a military

post. For instance, the State highways, laying aside the question of Federal aid, the State highways are used in getting to them, the policing of towns where the soldiers go, and the various services which the States in a way authorize, and the telephone and the telegraph are used by them. I do not think that you can measure just exactly what contribution is made and what benefit is obtained.

Looking at the other side of it, the Federal Government and the Naval Establishment do not pay any real-estate taxes whatsoever for military posts or fortifications or anything of that kind, and they should not, but I do not think it is a matter that we can measure accurately and say that absolute justice is being done in the matter of State service and benefit, but it seems to me that there is some benefit there that they have gotten, and there is some exemption; even if we permit this taxation, there is some exemption granted to the Federal Government. Perhaps the word "granted" is not the word to use, but in any event no State tax is paid upon real estate by the Federal instrumentality. It seems to me it is a matter that we cannot measure accurately.

Major WATSON. We cannot put it on a quantitative basis, no, sir; but we do wish to call attention to the fact that there are many utilities which are really operated by the post. It is a little community which operates with self-sufficiency, so to speak.

For the reasons stated the War Department requests that the proposed bill be not enacted into law. It is believed, however, that the main purpose of the measure can be accomplished and grounds for the principal objections noted above removed by an amendment which will eliminate all reference to use taxes and add a proviso substantially as follows:

Provided, That without prejudice to other legal exemptions which may exist, this act shall not be construed to authorize or permit the levy and collection of taxes of the nature herein specified, upon, with respect to, or measured by sales by or purchases from the United States or any of its agencies or instrumentalities—

Up to that point we have the same idea that Mr. Pierce has attempted to give with his amendment, but we go a step further and seek to dispel in advance what might be called, from the standpoint of the War Department, an avalanche of litigation coming from many States, as it may do, by including the following words in the suggested proviso—

such as, but not limited to, commissaries, post exchanges, and company or other unit funds.

Senator GEORGE. Is there someone from either the War or the Navy Departments who wishes to be heard? Do you desire to make a statement, Admiral Spear?

STATEMENT OF REAR ADMIRAL RAY SPEAR, PAY MASTER GENERAL OF THE NAVY, NAVY DEPARTMENT

Admiral SPEAR. There is just one thought that I have with regard to this personal-property tax. I would like to explain the possible effects of the present wording of this bill on officers residing in Government quarters that are furnished, and by that I mean the furniture, carpets, and so forth, furnished by the Government.

As I understand the wording of this bill, it would permit the State to impose a tax on personal property. We have many cases where officers have declined the use of Government property in Government quarters and have brought in from other States household effects which are their own personal property.

It is not clear to me when the Government is not under the necessity of furnishing those quarters at the cost of several thousands of dollars, why the officer should be penalized by paying a personal property tax on his own property, thereby relieving the Government of the necessity of furnishing that set of quarters.

I am thinking out loud from the testimony that has been given here.

I would like to suggest to the committee that in the event of a national emergency or actual war, these yards would be closed. The commandant has the full authority to close these yards absolutely to the public. I believe the States would have, perhaps, a great deal of difficulty under those circumstances, of determining what tax should be paid if they are collected in the same manner as they collect it from activities within the boundaries of the State outside of the Federal reservation.

I think the groundwork and the objections of the Navy Department, as well as of the War Department, have been fully expressed in accordance with my own ideas, and I am in hearty concurrence with those objections, because I think as far as it affects my own personnel of the Bureau of Supplies and Accounts this bill would turn our officers into tax-collecting agents for the State.

Senator Brown made the statement that these Federal reservations do get a great deal of benefit from State laws. I agree with that. He spoke particularly with regard to the State roads. I think that was the basis upon which the Navy consented to the tax on gasoline, as we all pay it now, because it was recognized that we did get the benefit of State roads, and to that extent we thought that was only fair because our personnel did use State roads in common with the citizens of the State.

Senator Brown. Admiral, I have one question which perhaps ought to be settled while you are here, but perhaps it should be answered by Mr. Pierce.

You refer to a tax on tangible personal property by reference to the property that might be supplied by a naval officer himself in substitution for what is usually furnished by the Government. I do not understand that there is any authority granted here to tax tangible property as such, but only the sale or the use of that property, such as renting, to me, for instance, an automobile while I am traveling in and about a reservation, but not a tax upon the property itself; merely upon a sale of the use of that property. Am I right about that?

Mr. Pierce. That is correct, Senator. In most sales tax States, they have found it necessary to adopt these taxes.

Admiral Spear. I would like to point out in the very case you cite, that we all pay a personal property tax on that automobile when we receive our license plates. There is no one that escapes that.

Senator Brown. But it is not a tax upon the property itself, but it is a tax upon the use of that property.

Admiral SPEAR. I think that when we see this bill with the proposed amendments, perhaps our attitude toward this bill might be changed somewhat, but we would like very much to see the revised bill before it is finally acted upon. There have been several suggestions here for the purpose of clearing up the real intent of the bill.

Senator BROWN. I think both the Army and the Navy representatives have made some very valuable contributions in that respect.

Senator GEORGE. You will have the opportunity to see the bill, because this bill is only before a subcommittee of the full committee. When we make a report to the full committee, necessarily we will have a print made of the bill carrying such amendments as we suggest.

Admiral SPEAR. I have nothing further, sir.

Senator GEORGE. Thank you very much.

Did any representatives of the Interior Department or the Treasury Department wish to supplement the statements made by the formal reports that have been submitted to the committee?

STATEMENT OF DAVID SPECK, ASSISTANT SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. SPECK. I am from the Interior Department. I have nothing to add to our report, but I would be glad to answer any questions you gentlemen may have. I might first state briefly the substance of our report.

Our position is in favor of the La Follette amendment and also the Wheeler amendment, and with those two amendments, we have no objection to the bill.

The bill affects the Interior Department in its administration of certain national parks, and also in its administration of the affairs of Indians. With respect to the national parks, sales and use taxes are collected in all national parks with the exception of three, the three which would be covered by the Wheeler amendment, on the basis of State cession which have reserved to the State the power to levy and collect taxes. In connection with those three national parks, of which the most important is the Yellowstone, the enabling act contained no such exception, and it is our opinion that since in all cases where there has been an adjustment of jurisdiction between the States and the Federal Government, it has been done with respect to specific national parks, that practice should not be discontinued.

If, for example, Wyoming would desire the authority to levy and collect its sales tax within the Yellowstone, and should petition the Congress for an amendment of its enabling act, then the problem might be considered with reference to the administration of the park.

Senator BROWN. Mr. Speck, as I read Senator Wheeler's amendment, and as I heard brief reference to it, it seems to me that you did have good legalistic grounds for your position, but why should they be exempted from a practical standpoint? That is difficult for me to see. In other words, using your method, why should not Congress pass a bill such as you have just suggested?

Mr. SPECK. I am not prepared to consider that proposition on the

merits. I think it is a question which should be gone into thoroughly. Taxation is related, as you know, to public services. Yellowstone is a tremendous area, some 62 by 54 miles, involving over 2,000,000 acres. The roads in Yellowstone are all maintained by the Federal Government.

Senator BROWN. Isn't Yellowstone actually in three States?

Mr. SPECK. Yes; mainly in Wyoming, and just a small portion in Montana and Idaho. There are no schools in the Yellowstone. The Government employees have to send their children outside either to the public schools in, I think, Montana, or to private schools.

Senator BROWN. There are private schools within the reservation?

Mr. SPECK. I am not familiar with that. I do not believe so, but I would not want to say definitely.

Now, with respect to Indian reservations, there is no cession of jurisdiction. The States have not ceded jurisdiction to the Federal Government. The Federal Government's jurisdiction is based on the power of Congress under the Constitution, of article I, section 8, to regulate commerce with the Indian tribes. The courts have held that private property on Indian reservations is taxable. I do not think the question has come up for judicial decision, but the Solicitor for the Department a few years ago advised the Commissioner of Indian Affairs that the State sales taxes might be collected against white traders to the extent that they made sales to whites, but not to Indians, and it is to protect the existing state of the law that Senator La Follette's amendment was introduced. That would merely continue the existing state of the law.

The exemption of Indians from the sales tax is based upon the power of the Commissioner which has been granted by the Congress to appoint traders for the Indian tribes and to make rules and regulations relating to the amount and the quantity of goods and the prices—that is the important point—the prices at which the goods may be sold. Of course, if a sales tax is levied, that affects the price irrespective of the legal nature of the tax, whether it is one from the seller or one from the purchaser—it is generally passed on.

I think that states as briefly as I can the position of the Department. If you have any questions I will be glad to answer them.

Senator GEORGE. Thank you very much.

Mr. SPECK. Incidentally, I might add, the amendment suggested by Mr. Pierce, I think, is in the direction of our position with respect to Indians. It might have to be changed slightly, but I think they are in general agreement with our position.

Senator GEORGE. The communications from the Interior Department respecting this bill and amendments thereto suggested by Senators La Follette and Wheeler will be inserted in the record.

THE SECRETARY OF THE INTERIOR,
Washington, August 1, 1939.

Hon. PAT HARRISON,
Chairman of the Committee on Finance, United States Senate.

MY DEAR SENATOR HARRISON: It has come to my attention that H. R. 6687, entitled "A bill to authorize the levy of State, Territory, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof occurring in United States national parks, military and other reservations or sites over which the United States Government may have jurisdiction," is now on the Senate calendar.

Although the proposed legislation involves matters of vital concern to this

Department, it has been passed by the House of Representatives and reported out by the Senate Finance Committee before our report thereon could be submitted. Therefore, I earnestly request that the bill be recommitted to the Senate Finance Committee for further consideration.

The bill presents a serious question as to whether it would authorize the levy of State sales and other taxes on transactions within Indian reservations. We have been advised by the office of the Senate legislative counsel that it is not intended to apply to such transactions and will not be so construed. It is possible, however, that the bill, if enacted, may be construed otherwise by State taxing authorities and by State courts. If the bill were to be construed to apply to Indian reservations, it would probably be in violation of established constitutional and treaty rights of the Indians and doubtless would lead to prolonged litigation. It certainly would be in contravention of the established departmental policy that transactions between Indians on Indian reservations should remain a matter of Federal rather than of State control. In order to avoid any possible question on this score, I recommend that the bill, if not recommitted to your committee, be amended by adding at the end thereof the following proviso:

"*Provided*, That this Act shall not affect existing law relating to taxation on Indian reservations."

Since this report has not been submitted for clearance to the Bureau of the Budget, no commitment can be made as to the relationship of the proposed legislation, or the suggested amendment, to the program of the President.

Sincerely yours,

E. K. BURLEW,
Acting Secretary of the Interior.

THE SECRETARY OF THE INTERIOR,
Washington, March 13, 1940.

Hon. PAT HARRISON,
Chairman of the Committee on Finance, United States Senate.

MY DEAR SENATOR HARRISON: I have received your letter of January 16, requesting my comments on H. R. 6687, entitled "A bill to authorize the levy of State, Territory, and District of Columbia taxes, with respect to, or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof occurring in United States national parks, military and other reservations or sites over which the United States Government may have jurisdiction," and on the amendment thereto intended to be proposed by Senator Wheeler.

While I am in sympathy with the objectives of the proposed legislation, I believe that the enactment of the bill in its present form would adversely affect the Department of the Interior. I recommend, therefore, that the proposed amendment of Senator Wheeler be adopted and that the bill be amended further as hereinafter indicated.

The purpose of the proposed legislation, as stated in the reports (H. Rept. No. 1207 and S. Rept. No. 1028) of the committees of Congress that have passed upon it, is to provide for uniformity in the administration of State sales and use taxes within as well as outside Federal areas. The justification of the measure is grounded in major part upon the recognized generosity of the States in granting to the United States exclusive jurisdiction over Federal areas in order that any conflicts between the authority of the United States and a State might be avoided. It would seem that this grant of exclusive jurisdiction is that which is referred to in article I, section 8, clause 17 of the Constitution and which is made when a State consents to the acquisition of lands by the Federal Government "for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." The States have uniformly enacted general statutes granting blanket consent to any and all acquisitions for the stated and other similar purposes.

In the case of national parks, however, Federal jurisdiction has not been obtained by virtue of State consent in this manner. On the contrary, grants of jurisdiction by the States have been made by special acts relating to specific national parks and have been accepted by special acts of Congress. For various reasons it has been considered desirable and appropriate to adjust the respective spheres of State and Federal jurisdiction over national parks by negotiations with reference to the special problems of the particular area involved. With respect to most of the national parks, these arrangements between the States

and the Federal Government has resulted in a reservation to the States of the right to tax the property and franchises of persons and corporations within the national parks. Consequently upon such adjustments, the States have undertaken to provide public services such as school facilities and approach roads for the inhabitants and visitors in these national parks.

A different situation exists with respect to the national parks created prior to the admission into the Union of the respective States in which they are located which would be excepted from the proposed legislation under the suggested amendment of Senator Wheeler. There are three such areas, and in each the enabling act provided for the cession of exclusive jurisdiction without reservation of the power to tax. As a consequence, the Federal Government has been required to bear the financial burden of providing all necessary public services within these areas. There would seem to be, therefore, no necessity or justification for granting these States the right to tax persons and property within the national parks involved. Any changes in the existing arrangement between the States and the Federal Government with respect to these parks would seem to be more appropriately the subject of special negotiation. A precedent for this method of meeting the problem exists in the case of the Hot Springs National Park where the original grant of exclusive jurisdiction was subsequently qualified (26 Stat. 844) by the grant to the State of a limited power to tax.

I wish to refer to the Department's letter of August 1, 1939, in which the suggestion was made that the bill be amended by adding at the end thereof the following proviso: "*Provided*, That this act shall not affect existing law relating to taxation on Indian reservations."

Further consideration of the question has served only to emphasize the desirability of the amendment recommended at that time. It is clearly apparent that the grant of authority to levy State taxes on Indian reservations is not within the purposes of the bill, since Federal jurisdiction over Indian reservations is not derived from any cession or consent by the States but is predicated upon a plenary control of the Federal Government under the Constitution over the affairs of the Indians. The States may now exercise legislative jurisdiction over Indian reservations to the extent consistent with Federal jurisdiction over Indian affairs, and their powers to levy taxes in such areas is subject only to that limitation. While the bill does not in terms affect this limitation, the generality of its language leaves room for some doubt as to its effect and might result in serious embarrassment in the administration of Federal laws relating to the Indians. Since the matter is of utmost importance to this Department, I reiterate the recommendation that the suggested clarifying amendment be made.

I have been advised by the Bureau of the Budget that there is no objection to the presentation of this report to the Congress.

Sincerely yours,

(Signed) E. K. BURLEW,
Acting Secretary of the Interior.

Senator GEORGE. It might be suggested by the subcommittee that those State authorities here represented might confer with representatives of the Interior, Navy, and War Departments and might be able to reach an agreement on some amendment that would remove some objectionable features.

Mr. SPECK. I think so far as we are concerned that that can be done.

Senator GEORGE. It would be helpful to the subcommittee if you could do so, since it is manifest that both the proponents of the measure and the Departments affected, desire to make some amendments and have suggested amendments here.

Senator Brown, do you think that would be helpful?

Senator BROWN. Yes.

Mr. BUCK. I would be very happy to arrange such a conference if it is agreeable to the members of the Navy Department and the War Department and the Interior Department. You can see from the amendment that was offered this morning that it certainly is not the intention of either the proponents of the bill or anybody else

to try to extend the State jurisdiction generally over these reservations.

Senator GEORGE. That led to the suggestion, and I think it might be very helpful.

Mr. BUCK. May I inquire what the intention of the committee is? I have one more witness who just desires to present briefly some views in connection with some of the statements that were made by representatives of the Departments this morning. Do you care to continue now, or would you prefer to have them come back this afternoon?

Senator GEORGE. I think, Congressman, that we had better continue now.

Let me first inquire, Is there any representative of the Treasury Department who desires to add anything to the formal report submitted?

Mr. SURREY (assistant legislative counsel, Treasury Department). Our report stated that the bill would not affect the activities of the Department, and there is nothing to add to that.

Senator GEORGE. I will insert in the record at this point the report from the Treasury Department on this bill.

(The same is as follows:)

TREASURY DEPARTMENT,
Washington, February 2, 1940.

HON. PAT HARRISON,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Further reference is made to your request of May 20, 1939, for a report on a proposed bill offered by the National Association of Tax Administrators to authorize the levy of State sales or use taxes in areas controlled by the Federal Government within territorial boundaries of the several States.

On May 2, 1939, the National Association of Tax Administrators, assembled in Asheville, N. C., adopted a resolution memorializing the Congress of the United States to pass legislation authorizing the levy of State, Territorial, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property, or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof occurring in the United States national parks, military and other reservations, or sites over which the United States Government may have jurisdiction. The manner and the extent to which such taxes may be levied and collected with respect to transactions occurring wholly or partly within such areas are to differ in no material particular from the manner and extent to which such taxes may be levied and collected with respect to transactions occurring outside such areas.

It appears that the bill merely attempts and purports to provide for uniformity in the administration of State sales and use taxes within as well as without the Federal areas above described. There is no design to permit taxation within such Federal areas as would be constitutionally denied the States as applied to transactions outside such areas. The justification for the proposed bill lies in the uncertainty and confusion existing in the matter of the extent of retained control and jurisdiction by the several States in areas at one time or another ceded to the United States.

The policy of the proposed bill is of no direct concern of the Treasury Department. It is the view of this Department, however, that legislation which prevents tax avoidance and makes for sound administration, whether it be State or Federal taxation that is involved, is socially desirable.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

In the event that further correspondence relative to this matter is necessary, please refer to IR: GC: A-317000-163.

Very truly yours,

(Signed) JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

Mr. BUCK. If I may just interpose for just one moment, I want to call the attention of the gentleman of the Navy to the fact that the Navy Yard, Mare Island, lies within my district. The Bureau of the Census has ruled that all of these retired officers that the Paymaster General spoke about, who have quarters there and all of the civilians who are quartered on the island, are to be counted as part of the population of the city of Vallejo within which Mare Island lies, and therefore they recognize that there is a local and State jurisdiction as far as the population is concerned, at least, and the children of those officers and those men go to the Vallejo schools and do get the benefits without the imposition of any nonresident taxation. I take it they recognize that fact, too.

For the benefit of the commander who spoke about the University of California and its nonresident fee of $150, I may say that that does not apply to the children of any Navy personnel who may be quartered in California.

I would like to present Mr. Say, the tax counsel of the State Board of Equalization of California.

STATEMENT OF HARRY L. SAY, TAX COUNSEL, STATE BOARD OF EQUALIZATION, STATE OF CALIFORNIA, SACRAMENTO, CALIF.

Mr. SAY. I realize the lateness of the hour, and I will attempt to be quite brief in the few remarks which I have to make to the committee.

The general impression that I got from listening to the objections raised by representatives of the various Federal departments is that there is some sort of misunderstanding regarding the object to be attained by this measure.

I think that the amendments that were presented by Mr. Pierce will, to a great extent, eliminate the misunderstandings that have been brought about. The Attorney General has submitted an amendment, as I understand it, to the committee which is going to make it very clear that the matter of exclusive jurisdiction is not affected by this bill in its final form.

We believe that that result is accomplished by the first subdivision of the amendment. However, we certainly bow to the opinion of the Attorney General with respect to that particular point.

There has been some discussion this morning—I might say that all of the objections have centered around: What is a Federal instrumentality? For example, Senator Brown expressed the opinion that if a sailor expressed a desire to purchase a hat and purchased it from a Government store, that undoubtedly the tax should not be applicable. However, of course, if that sailor desired to have a type of garment that he ordinarily would not wear, and went to a tailor on or off the reservation, I think we all agree that the tax should be applied to him just exactly the same as it would be applied to anyone else in similar circumstances.

I have before me an opinion which was rendered on August 5, 1939, by Robert H. Jackson, Acting Attorney General, in which quite a number of cases are cited.

The opinion states army post exchanges are instrumentalities of the Federal Government, and the Hawaii Tobacco Tax Act is not applicable to sales of tobacco by such exchanges.

That should preclude any discussion as to the status of a post exchange, and I understand a store operated by the Civilian Conservation Corps is nothing more—it has been called a baby post exchange, an exchange which is operated under the authority of the Secretary of War, under the same article as a post exchange is operated, and would also be comparable to ships' service store operations.

This opinion, I think, answers most of the objections that have been raised by the departments. It should answer the objection raised by Major Watson that the passage of this bill would result in litigation. I do not believe that that fear is well founded.

There has been considerable discussion about the use tax applying to enlisted men who are being transferred from one State to another. My observation would be that no State would attempt nor could it apply a use tax to property bought and substantially used in one State and subsequently transferred to another State. To apply a tax in that fashion would render the application of the tax unconstitutional. That would enable, theoretically, for every State of the Union to impose a tax on property simply because it was transferred through the State or came to rest a short time in each State.

So that the only time that the use tax would be applicable is where the property was purchased outside of the State in interstate commerce, and shipped directly to the purchaser in this State or where the purchaser, we will say, left the State, went outside of the State, purchased an automobile and brought it back to the State from which he came, and undoubtedly in that case the property was purchased for use in the particular State, which could impose the use tax.

It has been mentioned that the burden would fall heavily upon young recruits in the Army and the Navy. We all know that the education of those persons is the most desirable practice. The salary, as I understand it, is $21 a month. If the entire salary were used to purchase tangible personal property, the burden would be, of course, 63 cents if the State tax were 3 percent, or 42 cents if it were 2 percent. The amount of tangible property purchased by such personnel is a whole lot le of course, than the salary that they receive.

In the State from which I come, California, we spend about $80,000,000 a year on our schools. The children of the personnel of the Navy and the Army are invited, of course, to attend the schools, and I might say that in California, collections under our sales tax and use tax primarily go for the purpose of education. We collect, I think, about $93,000,000 a year, and of that amount over $80,000,000 a year is used for the purpose of education.

I would be very pleased to answer any questions that the members of the committee may desire to propound to me.

Senator BROWN. I have no questions.

Senator GEORGE. I have no questions.

Mr. SAY. Thank you very much for your patience.

Senator GEORGE. May I inquire, and perhaps someone here may be able to help me out on a matter that I have been thinking of. Such an institution, for instance, as the Soldiers' Home here in Washington, which is in the District. Would it be in anywise affected by the provisions of this bill?

Mr. SAY. You mean sales to the Veterans' administrative establishment?

Senator GEORGE. In the Soldiers' Home.

Mr. SAY. I would say absolutely not. That that is a sale to the Government, and that those sales under this proposed bill are not affected.

Senator GEORGE. Or any sales by them. I happen to know that out there they do keep a dairy—I believe they have the No. 1 dairy in the country. They probably sell surplus products—in fact I am sure that they do. Would that be affected by this in anywise?

Mr. SAY. As I understand it, and I would like to be corrected if I am mistaken——

Senator GEORGE (interposing). I think that would be regarded as a Federal agency because the money is appropriated for its support, but only out of funds contributed by the men who have served in the Army and the Navy.

Mr. SAY. If the Soldiers' Home that you have referred to is operated similarly to the home which is in Illinois, I remember the Comptroller General rendered an opinion to the effect that that particular home, which was operated by the Veterans' Administration, was so operated by an instrumentality of the Federal Government. Under this bill sales by the Government are not affected in any way whatsoever, and not affected insofar as the collection of the use tax might be concerned.

That point was referred to by Major Watson. If the Government makes a sale by any of its instrumentalities, the tax does not apply in any way, manner, shape, or form, and under this bill you cannot require the Government to act as a tax collector.

Senator BROWN. If a post exchange sold to a person who was a part of the Government establishment goods which were not necessities, there could not be a tax levied upon that? That is just a situation that you cannot hope to cover.

Mr. SAY. That is a situation that is not covered, of course, in the bill. If we accept this opinion of Robert H. Jackson as being the law, it does not make any difference if a post exchange sells a radio to me as an employee of the State or an enlisted man, there would be no tax.

Senator GEORGE. If there is no other witness to be heard, unless there is objection, I may state that Mr. T. Grady Head, the Revenue commissioner of the State of Georgia, desired to be present, but being unable to be present he asked the privilege to file a brief statement, and his statement will be incorporated in the record as soon as it is furnished to the clerk of the committee.

(The statement submitted by Mr. Head is as follows:)

Statement by T. Grady Head, as State revenue commissioner and head of the Department of Revenue of the State of Georgia, favoring the passage of H. R. 6087, being an act "to authorize the levy of State, Territory, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof occurring in United States national parks, military and other reservations or sites over which the United States Government may have jurisdiction"

As administrative head of the Revenue Department of the State of Georgia, there are two reasons why the passage of the above act would be strongly favored by me, and the first of these, of course, would be the increase in revenue that might be anticipated by the State.

There are located in the State of Georgia 3 large military reservations and approximately 90 other activities under the supervision and direction of the Federal Government that would be affected by the passage of the act. The only tax now levied by the State, which is in the nature of a sales tax, that would affect the Government reservations and the employees of the Federal Government located thereon, is the tax on cigars and cigarettes, whisky, wine and beer, and gasoline, and under existing law gasoline purchased for private use on the reservations is subject to the State tax. This leaves only alcoholic beverages and tobacco on which State taxes would be extended to Government reservations in this State by the passage of the act referred to.

By permitting the State to tax these nonessentials on Government reservations, the increase in revenue to the State would not be sufficient to solve existing financial problems of the State. We do not anticipate an increase in revenues from these sources, if taxed on reservations, in excess of $300,000 per year. But, since all taxes from alcoholic beverages go directly to the school fund of the State, and the major portion of the tobacco tax goes to the general fund of the State, from whence it is transferred for educational purposes, we believe that soldiers and other employees of the Federal Government should pay these taxes. The children of enlisted men and officers of the Federal Government are entitled to and in many instances receive the benefits of the public-school system of this State. They are furnished free school books and free public schools through high school. Notwithstanding this fact, the enlisted men and officers of the Army and other Federal employees located on Government reservations are making no contribution at present to the support of the school system of this State, and the taxes referred to being on nonessentials, we take the position that it is not unreasonable to ask this contribution of these Federal employees.

As heretofore indicated, however, the increase in revenue is not the principal reason why we believe that taxation of these commodities on Government reservations should be permitted by the Federal Government. We believe in uniform taxation, and we concur heartily in the decision of the Supreme Court and the subsequent act of Congress that permitted the Federal Government to collect income taxes from State employees and State governments to collect income taxes from Federal employees. We do not believe in exemptions and exceptions to taxation, because from our administration of the revenue laws of the State of Georgia we find that the exemptions and the exceptions cause more violations of the revenue laws, with more resulting expense and annoyance to the enforcement agencies of the State government charged with collection of the revenues, than any other source.

We have requested previously the cooperation of the officers of the various forts and reservations in this State, and have asked them not to sell taxable items from Government canteens, post exchanges, and officers' clubs to private citizens not entitled to the exemptions. While the commanding officers have sought to comply with our requests and have, in our opinion, honestly endeavored to prevent civilians from purchasing at post exchanges, canteens, and officers' clubs, we have been continually annoyed by quantities of taxable cigars and cigarettes being purchased by civilians from these places for their own use, and being distributed among their friends, and we have had many violations by reason of soldiers and veterans purchasing these items for use by civilians. It is no exaggeration to assert that if the taxation of these items were uniform in this State and applied to Federal reservations and to Federal employees on these Government reservations in the same manner that they apply to citizens of the State, the enforcement units of the State department of revenue charged with requiring that these revenue acts be complied with could be reduced 50 percent, and the saving that would result thereby would amount to a substantial increase in the revenues available for school purposes.

We have previously contacted, by letter and otherwise, the officers in charge of Civilian Conservation Corps camps in Georgia, and have requested that they not permit the distribution of cigarettes from these camps to civilians. In practically every instance the officer in charge of a Civilian Conservation Corps camp has attempted to cooperate, in our opinion, and in a number of the camps they have undertaken to limit the purchases by those entitled to purchase goods tax free, but it is not possible in every instance for officers to enforce the compliance they seek.

The Department of Revenue was caused considerable expense and embarrassment recently by a group of Civilian Conservation Corps boys purchasing unstamped cigarettes at their local camp and taking them into a nearby small city and trading them to an unscrupulous cigarette and alcoholic beverage dealer for

imported wines of high alcoholic content. In addition to the fact that these boys procured alcoholic beverages that they otherwise might not have been able to obtain, the civilian merchant who had taken their unstamped cigarettes undertook to rid himself of these cigarettes by sending them to legitimate dealers with a request for exchange. In this manner, the legitimate dealers not knowing that these were unstamped articles, he procured stamped cigarettes for unstamped goods, and succeeded in scattering unstamped cigarettes in retail establishments in a city of some 15,000 population. Our inspectors began to locate cartons of unstamped cigarettes in practically every business house in the city. Since the cigarettes in stock of the legitimate dealers had presumably been bought from the local wholesale distributor, our men naturally thought that the distributor was slipping a number of unstamped cartons of cigarettes to his customers. It required considerable investigation to uncover what had happened and was happening, and to convict the unscrupulous cigarette dealer who had traded wine for the unstamped cigarettes.

This is only one instance. I can recite from my personal knowledge many similar situations where the law is being violated or has been violated by civilians, citizens of the State, and which were made possible entirely by the fact that Federal reservations procure these goods untaxed. Notwithstanding the attempted cooperation of the commanding officers at the forts and reservations, we have found that their orders are not complied with. Inspectors from the State department of revenue have on numerous occasions purchased unstamped goods from post exchanges and canteens, and have noted like purchases by many civilians. When these matters are brought to the attention of the commanding officers, they take steps to have the evil discontinued, and possibly for a period of 4 or 5 days it will be discontinued, and then immediately the practice is resumed.

On yesterday I again sent inspectors of the department of revenue to the large military reservations in this State. The seven reports on their investigations which I have received are startling in the similarity of the conditions which they reveal. Without exception, the inspectors were able to purchase unstamped cigarettes from the post exchanges and canteens, and they report that anyone can buy the cigarettes. With reference to the packages of cigarettes, each inspector made the same simple but graphic statement, "No questions asked." One inspector was not allowed to purchase a carton of cigarettes but was told that he could get some soldier to buy them for him. This inspector's investigation showed that unstamped cigarettes were being distributed in a city near the reservation through civilian employees working at the post exchange.

I believe it is the duty of every citizen financially able to do so to contribute to the support of the Government, both Federal and State, in proportion to his ability and in proportion to the rights and benefits he receives from the Government. There are thousands of soldiers located on Government reservations in Georgia that pay no State taxes. They are not the owners of real estate in this State or elsewhere, they pay no ad valorem taxes, their incomes are below the amount of the exemption by the Federal Government and the State government. Yet these soldiers enjoy the benefits of our schools, the protection of our State police when using our highways, and many other advantages of the State government, to which they are not contributing in this State, nor are they contributing elsewhere. The argument may be advanced that the compensation of these men is not sufficient to warrant the payment of any State tax. However, since their food and clothing is furnished by the Federal Government, should this act be approved by the Senate, in the case of the State of Georgia and practically every other State, the only State taxes they would be required to pay would be nonessentials taxed for the support of the State government. If the present compensation of these soldiers is not sufficient to pay the nominal amount of State taxes that would be collected from them for cigars and cigarettes and alcoholic beverages, then the compensation should be increased, since there should not be any exemptions from taxation in this country.

Laws should be applied uniformly, from the Chief Executive of the country to the most humble citizen. No class should be set up as being superior to or above the law of any State or Territory, or above any law of the Federal Government. Exemptions from State laws should not be granted by the Federal Government to Federal employees any more than exemptions should be attempted by the States from compliance with Federal laws. We believe that the revenue that would be paid by soldiers and officers and employees of the Federal Government on Federal reservations in the State of Georgia would be just and

right and should be paid, and we believe that the resulting benefit in enabling the State to enforce these taxes uniformly is a benefit that the State of Georgia is entitled to at the hands of the Federal Government. We take the position that the act above referred to should be passed, regardless of whether or not it means one dime increase in revenue to the State government, since it would enable uniform application of the State revenue laws to all within her boundaries.

The writer would like to appear personally and testify before the committee, but my duties and responsibilities being heavier at this particular season than any other time of the year, I was prevented from testifying before the committee. I do request serious consideration by the committee, and approval and favorable recommendation of the act, and that the same be passed by the Senate.

Respectfully submitted.

T. GRADY HEAD,
State Revenue Commissioner of the State of Georgia.

MAY 8, 1940.

Senator GEORGE. Congressman Carl Vinson, chairman of the Naval Affairs Committee of the House of Representatives, has written me a letter regarding this bill, which without objection, will be entered in the record.

(The letter is as follows:)

HOUSE OF REPRESENTATIVES,
Washington, D. C., February 26, 1940.

HON. WALTER F. GEORGE,
United States Senate, Washington, D. C.

MY DEAR SENATOR: As chairman of the Committee on Naval Affairs, House of Representatives, I made a recent survey of pending legislation affecting the Navy, in the course of which my attention was directed to the bill H. R. 6687 "To authorize the levy of State, Territory, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by sales, purchases, or use thereof occurring in United States national parks, military, and other reservations or sites over which the United States Government may have jurisdiction."

The history of this bill shows that it was introduced on June 6, 1939, by Mr. Buck, of California, and reported favorably by the Committee on Ways and Means on July 22, 1939. On July 26, 1939, it was passed by the House, and on the same day it was referred to the Senate Committee on Finance. Two days later it was reported favorably to the Senate, with amendments, and placed on the Senate calendar, where it stayed until January 10, 1940. At this time, it was recommitted to the Committee on Finance, and I understand it will be considered by a subcommittee of which you are the chairman. My information is to the effect that no hearings were held on the bill in either the House or the Senate.

From my study of this bill I am convinced that the effects of its enactment have not been fully appreciated and I note with pleasure the action of the Senate, particularly the Committee on Finance, in deciding to reconsider it. As a matter of fact, it is because I myself did not realize its significance that I took no action on the measure when it was before the House, and venture now to address you on the subject.

In discussing this bill with representatives of the Navy Department it has been pointed out to me that while there are other highly undesirable features, the most objectionable one, which ties in with all the others, in varying degree, is that of interference with essential Federal functions. I am in complete agreement with the Navy Department on this point. The language of the bill is so broad that it embraces virtually every transaction taking place on a naval reservation, and although it is the stated purpose of the framers, as evidenced by the House report on the bill, to impose no duty of any consequence on any person residing or located upon the Federal area, the bill as worded most certainly does so. The collection of taxes, alone, for instance, would in itself call for no inconsiderable effort, and be subject to all State and local laws and regulations, with their attendant penalties; and the Navy Department has stated frankly that the prospect of issuing regulations to cover the multiplicity of situations is viewed with feelings approaching consternation.

The Navy Department having made an exhaustive study of the bill in an-

ticipation of being afforded an opportunity to present its views to your subcommittee I will confine my comments to the salient features. I note, for one thing, that the House report terms the situation with respect to post exchanges, ships service stores, commissaries, and similar agencies, a "minor problem" considering the importance of these agencies. This cannot be dismissed so lightly. These very activities serve a most useful purpose and they contribute directly to essential naval functions. Not only do they involve no charge against appropriations, they actually make appropriations unnecessary, and as such represent a distinct asset to the Government, in dollars and cents. Their establishment has resulted in twofold benefits, in that service personnel —no others—are better enabled to live on their pay; and that the small profits made are applied directly to the welfare of enlisted men. I therefore regard the imposition of a sales tax to these activities not only as an out and out interference with a branch of naval administration which has been highly successful, but as entirely unjustified.

There are one or two other statements in the House report on this bill which I cannot let go unchallenged. This bill is readily distinguishable from the Hayden-Cartwright Act, because that act required only a check on the motor-vehicle fuel sold, and made the officer in charge responsible to the Federal Government. It was, in effect, a Federal duty imposed on a Federal officer by the Federal Government. This bill places Federal officers at the mercy of State officials.

I wish to make it clear that I am concerned primarily with the effects of this bill on the Navy, and that while I am not at all disinterested in the other Federal reservations, such as national parks or Indian reservations, I do not feel free to take up their problems with you, except possibly by way of comparison. In this connection it seems to me there is a fundamental difference between sales in a national park, for instance, and sales on a naval reservation. In the former case the sales are usually made by a concessionnaire to the general public; in the latter, to a restricted personnel in need of the benefits by Government instrumentalities.

There is one more point that occurs to me as being directly on the question before you. I mention it because I know that although it is felt keenly in the Navy Department, the representatives of the Navy Department are reluctant to use it as an argument. This is the unintentional effect the enactment of this bill will have on morale.

A writer for the Saturday Evening Post recently stated, in an article in that magazine, that the two model military organizations in the world, from the standpoint of morale, are conceded to be the French Army and the United States Navy. Morale has been defined as that state of mind which makes a man ready and willing to go out and fight the enemy for all he is worth, and so far as the United States Navy is concerned, the state of facts reported by this writer, if true, is not by any means an accident. Over a period of a good many years the Navy has taken a common sense viewpoint of what it takes to make an efficient organization, with particular emphasis on morale and everything that contributes to it, and one of the logical steps was to look after the individual man in the Navy when he was off, as well as on duty. A married man, given certain advantages, usually to enable to provide properly for his family, became a better fighting man; an unmarried man given certain other advantages, usually the opportunity for wholesome recreation, was likewise improved. It was with these objectives in view that commissary stores were established, and ships' service stores, with their associated activities, such as barber shops, tailor shops, cobbler shops, and laundries, put in operation.

The results of this treatment of enlisted personnel have been amazing. We now have the highest type of man the Navy has ever known. He is self-respecting, well-educated, and ambitious. He is smart in his personal appearance, and proud of his uniform, and intensely loyal. In short, he is a man of character. Such an individual is impervious to subversive influences, usually gets a good laugh out of communistic propaganda, and whether or not he chooses to make the Navy a career, he almost invariably winds up by becoming a better citizen.

Should the taxes provided by this bill be authorized, the Navy Department foresees the undoing of much of the constructive effort along the foregoing lines because of the reduction in the advantages that can be made available. I leave to your good judgment the wisdom of a course which would directly or indirectly impair the esprit de corps of which the Navy is so proud.

With best wishes, I am

Yours very truly,

CARL VINSON, M. C.

Senator GEORGE. Senator Wheeler, who is the author of the amendment to which reference has been made, has also written a letter in support of his amendment, and without objection it will be incorporated in the record, together with the amendment itself.

(The same are as follows:)

[H. R. 6687, 76th Cong., 3d sess.]

AMENDMENT Intended to be proposed by Mr. WHEELER to the bill (H. R. 6687) to authorize the levy of State, Territory, and District of Columbia taxes upon, with respect to, or measured by sales, purchases, or use of tangible personal property or upon sellers, purchasers, or users of such property measured by sales purchases, or use thereof occurring in United States national parks, military, and other reservations or sites over which the United States Government may have jurisdiction, viz:

Before the period at the end of the bill insert a colon and the following: "*Provided*, That the provisions of this Act shall not be applicable with respect to any transaction occurring in whole or in part within any United States national park which was established prior to the date of admission to the Union of the State or States within the territorial boundaries of which such national park is located."

UNITED STATES SENATE,
January 18, 1940.

Hon. PAT HARRISON,
Chairman, Senate Committee on Finance, Washington, D. C.

MY DEAR SENATOR HARRISON: I wish to call your attention to the enclosed amendment to H. R. 6687, which I have just introduced.

The purpose of this amendment is to prevent a substantial and extremely undesirable increase in the prices which tourists from all over the United States would be required to pay for facilities and services, meals, lodging, transportation, etc., furnished them in certain of our national parks. While this result is not intended, it would nevertheless follow the enactment of the bill in its present form.

H. R. 6687, as I understand it, would authorize the States to levy sales, use, and a wide variety of other taxes upon transactions occurring upon federally owned property. National parks are included in the Federal property to which this authorization extends, and as a consequence this measure would permit the States to levy sales, use, franchise, license, registration, and other similar taxes upon the facilities and services furnished to tourists in the national parks, and upon the persons who furnish these facilities. The levy of these State taxes can have only one result—a substantial increase in the prices which the tourists must pay for these facilities and services. That this increase will be substantial is shown by the fact that in Yellowstone Park, for example, there are no less than nine Wyoming taxes which would be applicable if the bill is enacted without the suggested amendment.

In the case of certain of our national parks, peculiarly situated because of the circumstances surrounding their creation and the retention of exclusive jurisdiction by the Federal Government, this increase in the cost of facilities and services furnished to tourists would not be desirable. These parks, of which Yellowstone in Wyoming is the largest and most important, were created prior to the formation of the States in which they are located, and the Federal Government reserved and has always exercised exclusive jurisdiction over them. Permitting the States to levy taxes in these parks as suggested by H. R. 6687, would impede the promotion and development of such parks as recreation centers for the public.

Furthermore, State taxation in these national parks is not necessary to accomplish the purpose of this bill. According to the reports of the committees, it is designed to permit the levy of State taxes on sales made to persons, residing on small Government reservations in large communities, who derive benefit from the expenditure of State funds for schools, roads, fire and police protection, etc. In addition it is directed at merchants located on these reservations, who, in sales to both residents and nonresidents of the reservation, can because of their tax exemption, undersell the local merchants. None of these circumstances are present in the national parks, particularly Yellowstone Park. This park is maintained and operated by the Federal Government for the sole and exclusive benefit of the people of the United States as a whole. There is no business within the park, no persons residing within it, and no property there except such business, persons, and property as are necessary and essential to maintain the park. The many services operating in the park

are permitted only for the benefit of the tourists and are regulated and controlled by the Department of the Interior. There is no competition between the restaurants and stores operating in the park and similar enterprises outside the park in the State of Wyoming. As a matter of fact it is over 70 miles from the nearest Wyoming community, Cody, to any store or restaurant in the park. Nor are there any residents of the park who derive benefit from funds expended by the State, and who might therefore be expected to share the tax burden. On the contrary, the taxes which H. R. 6687 would permit the State to levy on transactions occurring in Yellowstone National Park would fall entirely upon the tourists who annually visit the park in such large numbers.

Another observation I wish to make is that the State of Wyoming contributes absolutely nothing to the maintenance of that park. It was originally acquired, has been maintained, and is operated solely with Federal funds. There is no logical reason why the State should be permitted to levy taxes upon the tourists, who derive no benefit from the State of Wyoming and who have already paid their fair share of taxation in their own States, even though such levy is indirect. The State, on the other hand, derives great benefit because of the large number of tourists that pass through the State in order to visit the park.

The levy of these State taxes in the national parks mentioned would be contrary to the original purpose of Congress in creating Yellowstone Park. In the act creating it, Congress declared that it should be set apart for the benefit and enjoyment of the people. When Wyoming was admitted to the Union as a State, Congress specifically provided that it should retain exclusive control and jurisdiction over the park. The entire history of the administration of the park demonstrates that the main purpose has always been to make the park and its facilities available to the greatest possible number of people at the lowest possible rates. To this end the Department of the Interior has exercised close supervision and control over the limited number of private individuals it permits to do business in the park. Not only are the prices at which these individuals furnish their goods or services to the public strictly regulated, but the amount of profit which these individuals may make is limited. The granting of authority to the State to levy sales and other taxes in Yellowstone Park, increasing as it would the costs of the facilities furnished, would certainly be at variance with the past policy of Congress and the Government in dealing with the park.

I understand that the national parks at Hot Springs, Ark., and Platt, in Oklahoma, would also be affected by this amendment.

I shall appreciate it very much if you and your committee will consider these observations carefully in connection with the study of this measure and hope it is possible to have my amendment included in the bill should it be reported out again.

With kindest personal regards, I am,

Sincerely yours,

(Signed) B. K. WHEELER.

Senator GEORGE. I will also insert in the record at this point the communication from the Attorney General, which has previously been referred to.

(The letter is as follows:)

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., February 5, 1940.

Hon. PAT HARRISON,
Chairman, Committee on Finance,
United States Senate, Washington, D. C.

MY DEAR SENATOR: I desire to call your attention to certain complications that may arise if the bill (H. R. 6687) to authorize the levy of State and Territorial sales and personal-property taxes on Federal reservations should be enacted in its present form.

The legislation proposes to authorize the levy and collection of Federal reservation of State and Territorial taxes with respect to or measured by sales, purchases, or use of tangible personal property.

The sweeping nature and the broad scope of the legislation might result in authorizing representatives of State taxing authorities to question Federal law officers and inspect books and records of Government departures located on Federal reservations. The desirability of such a consummation is highly doubtful.

From the standpoint of the enforcement of the criminal law, the legislation may result in an embarrassment which is probably unintended. Criminal jurisdiction of the Federal courts is restricted to Federal reservations over which the Federal Government has exclusive jurisdiction, as well as to forts, magazines, arsenals, dockyards, or other needful buildings (U. S. C., title 18, sec. 451, par. 3d). A question would arise as to whether, by permitting the levy of sales and personal-property taxes on Federal reservations, the Federal Government has ceded back to the States its exclusive jurisdiction over Federal reservations and has retained only concurrent jurisdiction over such areas. The result may be the loss of Federal criminal jurisdiction over numerous reservations, which would be deplorable.

It is suggested that if the bill is to receive favorable consideration, it should at least be amended by adding a saving clause preserving Federal criminal jurisdiction. Such a clause may be phrased as follows—

"Provided that the provisions of this act shall not be construed as in any way divesting the United States of its exclusive jurisdiction over any of the foregoing lands, or as precluding the acquisition of exclusive jurisdiction over lands hereinafter acquired by the United States, for the purposes of the provisions of section 5339 of the Revised Statutes."

Sincerely yours,

(Signed) ROBERT H. JACKSON,
Attorney General.

Senator GEORGE. Senator Brown, is there anything further or any questions you wish to ask.

Senator BROWN. There is nothing further from me, Mr. Chairman.

Senator GEORGE. That will conclude the hearing, gentlemen, unless there is something else to be submitted.

(Whereupon, at 12:55 p. m., the hearing was concluded, and the subcommittee adjourned subject to call.)